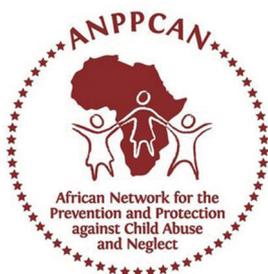
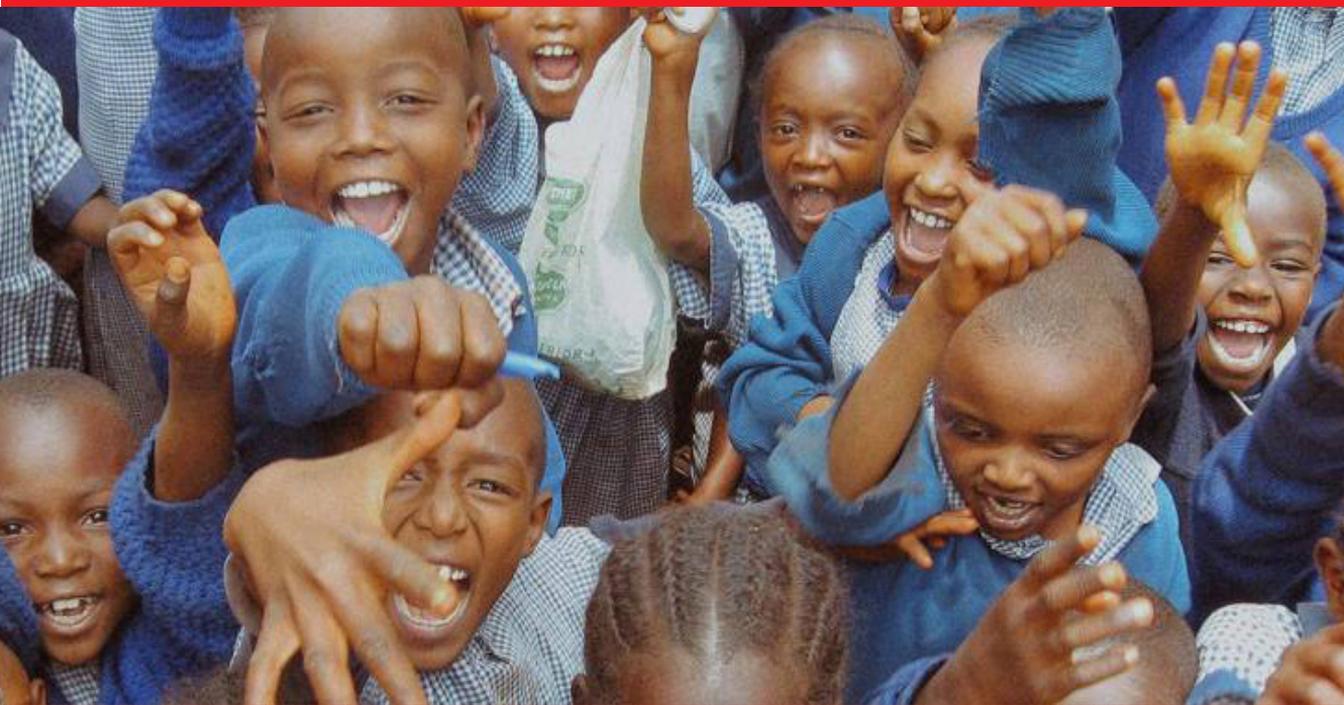


**STRENGTHENING THE WORLDWIDE MOVEMENT FOR THE PROTECTION  
OF CHILDREN FROM VIOLENCE AT WORK**

**A REVIEW OF LAWS, POLICIES AND PROGRAMMES  
FOR THE ELIMINATION OF CHILD LABOUR AND  
VIOLENCE AGAINST CHILDREN IN KENYA**



**GLOBAL MARCH**  
Against Child Labour  
Contra el Trabajo Infantil  
Contre le Travail des Enfants

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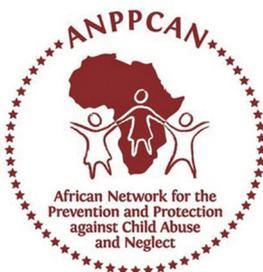
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# ABBREVIATIONS AND ACRONYMS

CBO	Community Based Organizations
CDF	Constituency Development Fund
CSO	Civil Society Organization
EFA	Education for All
FBO	Faith Based Organization
FPE	Free Primary Education
GER	Gross Enrolment Ratio
HIV	Human Immunodeficiency Virus
AIDS	Acquired Immunodeficiency Syndrome
ILO	International Labour Organization
IPEC	International Programme on the Elimination of Child Labour
MDAs	Ministries, Departments and Agencies
MDG	Millennium Development Goals
MOE	Ministry of Education
MOH	Ministry of Health
NCCS	National Council for Children's Services
NCPD	National Council for Persons with Disabilities
NESP	National Education Support Programme
NPA	National Plan of Action
OVC	Orphans and Vulnerable Children
SDG	Sustainable Development Goals
SEC	Sexual Exploitation of Children
UN	United Nations
UNCRC	United Nations Convention on the Rights of the Child
UNDP	United Nations Development Programme
UNESCO	United Nations Educational, Scientific and Cultural Organization
UNICEF	United Nations Children's Fund
WEF	Women Enterprise Fund
WHO	World Health Organization

# FOREWORD

This review of laws, policies and programmes on child protection efforts in Kenya, especially those touching on child labour and violence against children, was conducted by the research team at ANPPCAN. The research team considers issues affecting children in Kenya and in the region, conducts research on the issues and shares findings with stakeholders.

During a forum for sharing research findings with different partners and stakeholders, as well as, listening to the views from the different groups working in child protection, it became apparent that although a lot of work was being done in addressing issues affecting children in Kenya, some problems like child labour and sexual exploitation of children were still rampant. One of such forum is significant to this report.

In June 2017, during the celebration of the Day of the African Child, the research team at ANPPCAN was invited by the High Commissioner of Sri Lanka to make a presentation on child protection in Kenya at the Riara University. In the preparation of the presentation, the research team looked at what has been achieved on child protection by the Government and stakeholders in Kenya. It emerged that the Government of Kenya has done a lot for children and in fact, laws, policies and programmes are in place. However, implementation, as well as, enforcement of the laws was ineffective, leading to many children still facing challenges of abuse and exploitation, including child labour.

At the Riara meeting, which many stakeholders in child protection attended, similar observations were made. It emerged that coordination of efforts by the Government, as well as, allocation of resources for child protection, were the major challenges. Recommendations were made to undertake a comprehensive review to widen the concerns. Consequently, ANPPCAN started to reflect on the status of enforcement and implementation of laws, policies and programmes, which the Government of Kenya and other stakeholders had put in place to protect children.

At the same time, Global March against Child Labour, based in New Delhi, India, reached out to ANPPCAN to revive Global March against Child Labour initiatives, focusing on awareness raising and advocacy on child labour and violence against children. Such advocacy and awareness raising initiatives were visible when ILO Convention 182 was being formulated. The initiatives brought many groups, including children, to participate in the process, leading to many countries ratifying ILO Convention 182.

Global March against Child Labour wanted ANPPCAN to ascertain how SDGs 4 on education; 18.7 on child labour; 16.1 on trafficking and slavery and 2 on violence against children were being implemented in Kenya. ANPPCAN commenced the review of the current laws, policies and programmes addressing child labour and violence against children and their implementation in the country. The review looked at the SDGs 2, 4, 16.1 and 18.7 in relation to Vision 2030 and identified gaps that may hinder effective implementation of Government efforts.

The review confirmed what other studies have revealed on child protection efforts in Kenya, that indeed legislations, policies and programmes were in place, but were not being implemented effectively due to gaps ranging from allocation of resources by the Government to poor coordination of efforts. Further, some of the laws were found to contradict each other.

A key challenge faced is the allocation of adequate resources by the Government towards child protection efforts. This has led other challenges, such as, coordination and harmonization of laws and programmes, as the government needs money to be truly in charge of its activities, especially raising enough money to curb a large number of children from dropping out of school or failing to transit to tertiary education, because their families cannot afford to pay for their education. Similarly, many of the perpetrators of crimes relating to violence against children are not being punished, because those given that responsibility lack the resources to do so.

With the current efforts of the Government to curb abuse of resources meant for its development efforts, it is hoped that some of the resources saved from wastage and mismanagement and those recovered from the properties acquired through illegal means, will go a long way to assist the Government to enforce and implement the laws, policies and programmes to protect children in Kenya, ensuring that the SDGs that relate to education, violence and exploitation of children are effectively actualized.

While reading the Review report, special attention should be paid to the reports of other key organizations, such as UNICEF, the US Department of Labour and ILO, among others, who have undertaken studies or reviews on child labour and violence against children in Kenya. Reports produced by other groups friendly to children, such as the UNDP, World Bank, IMF, WHO and other international NGOs or groups, also provide vital information to guide responses or efforts towards child protection in Kenya. Some of the observations and recommendations being made in this Review are from the reports of the said agencies.

Finally, the Review report has come up with important recommendations after identifying challenges and gaps in implementation of laws, policies and programmes in Kenya. The findings of the review, including the recommendations, need to be shared widely so that they can be used by different groups to improve the situation of children.

For this reason this review report should be seen as an advocacy document to be shared without restriction.

**Dr. Philista Onyango**  
Regional Director  
ANPPCAN Regional Office

# ACKNOWLEDGEMENT

This review would not have been possible without the support of a number of individuals. First, a big thank you goes to the Research team at ANPPCAN Regional Office, which consistently, has undertaken studies on exploitation of children, such as sexual exploitation, trafficking of children and child labour itself.

The second group is the organizations that often reach out to ANPPCAN Regional Office for partnership and go further to fund some of these efforts. Top on the list is Bread for the Word, through Global March against Child Labour based in New Delhi, India. The Global March against Child Labour did not only provide the funds for the review, but provided valuable inputs towards the review. For Global March against Child Labour and ANPPCAN, education for all children remains a vaccine to eliminate all forms of child labour. ANPPCAN, sincerely, thanks these partners and recognizes the great work they do for children.

Last but not least, are the Consultant, the staff at ANPPCAN Regional Office and Global March Offices in India, who made sure that the review is done and the report produced and published. And as Mr. Kailash Satyarthi, the Nobel Peace Prize Laureate 2014 and the Founder and the Honorary President of Global March against Child Labour says:

***“Every child matters. If we fail our children, we are bound to fail our present, our future, faith, culture and civilizations as well.”***

To All of You

Thank you so much for consistently keeping children issues Alive!

# EXECUTIVE SUMMARY

This report presents a review of laws, policies and programmes on child labour and violence against children in Kenya with the purpose of determining their enforcement and implementation. It also aimed at identifying gaps in the implementation of the laws, policies and programmes. To achieve this, an exploratory framework was adopted to review laws, policies and National Plans of Action related to child labour and violence against children. Various literature and reports as well as ratified conventions that are relevant to child labour and violence against children were intensively reviewed.

The review established that Kenya has made significant efforts towards the realization of child rights, especially the protection rights. The efforts the government has made include; the ratification and domestication of some 6 international treaties, key among them, the UN Convention on the Rights of the Child (UNCRC) and the African Charter on the Rights and Welfare of the Child (ACRWC) to Kenyan laws. This has been done through enactment or amendment of different laws on child protection. These are the Children Act 2001, Sexual Offences Act 2006, Employment Act 2007 (Revised 2012), Counter Trafficking in Persons Act 2010, the Constitution of Kenya 2010 and Basic Education Act No. 14 of 2014.

Further, Government efforts have included the formulation and development of specific policies, such as, the National Children's Policy 2010, the Child Labour Policy 2016, as well as, introduction of programmes to address specific rights, such as, the provision of free and compulsory basic education and the elimination of the worst forms of child labour, as well as, the protection of children.

The review also found that the Government had mainstreamed Sustainable Development Goals into the Ministries, Departments and Agencies (MDAs) and strategic development plans were being developed in 2016 and 2017. Also, the Government had a wide range of partners and stakeholders; ranging from international organizations, employers' and workers' organizations to civil society organizations, which are supposed to participate in the implementation of the policies and programmes.

Through the review, 4 key issues emerged that need to be addressed as they hinder the realization of the good intentions of the Government regarding child labour, especially the worst forms, and violence against children. These are:

**1 Resource allocation.** This has been identified in Government reports as well as reports of some stakeholders where observations have been made that the Government is not allocating enough resources in this area and that the Government expects funding from other sources. Reason given for this omission is that the Government does not involve key ministries such as Planning, Finance and Agriculture when developing the National Plans of Action to address issues of child protection.

*This led to the recommendation that the Government should be the first one to allocate resources to ensure effective implementation of child protection programmes.*

**2 Coordination of key actors and programmes.** The review revealed that there are very many actors in this area and the roles of these actors are not clearly defined, yet there are many programmes and groups targeting children. This does not only lead to poor coordination, but also duplication of efforts.

The review also noted that there have been efforts to create a national child protection system in Kenya through The Framework for National Child Protection System developed in 2010, but the process is incomplete. This leaves a vacuum and it is hard to identify the driver of child protection issues in Kenya.

*It is, therefore, being recommended that the Government should create a National Child Protection System, as is the practice in other countries, with clear indication of the person or agency driving the process. Above all, the Government should take the lead.*

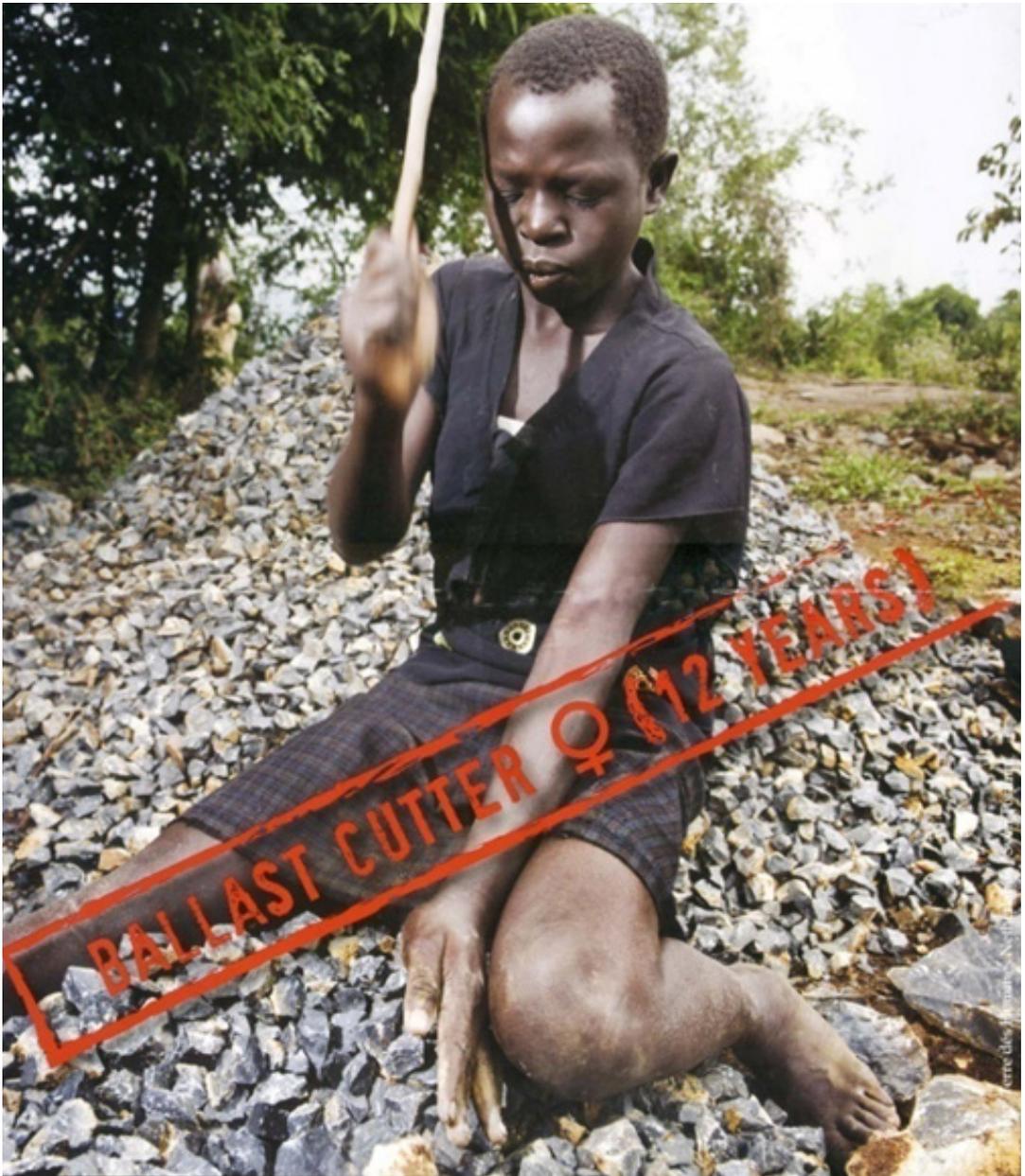
**3 Inconsistencies in laws.** Some of the laws on child labour and violence against children are in conflict. For example, the Children Act 2001 and the Employment Act 2007 (revised in 2012) contradict each other. The Children Act does not allow anybody below the age of 18 years (which is defined as a child) to be employed. The Employment Act on the other hand, allows children between 13 and 15 years to do light work, which is not clearly defined. The same Act allows children between 16 and 18 years to be employed. Similarly, the Basic Education Act of 2013 is not clear on the number of years a child should stay in school. These inconsistencies put children at risk and make protection difficult.

The enforcement and implementation of Sexual Offences Act 2006 and the Counter Trafficking in Persons Act 2010 is weak. The prosecution of the perpetrators within the Counter Trafficking in Persons Act is almost nil, while cases of sexual abuse take too long in courts.

*Thus, the recommendation is that enforcement and implementation of the laws be addressed and those Conventions and protocols not ratified, such as ILO Convention 189 on Domestic Workers and the CRC Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography be ratified and domesticated into Kenyan laws.*

**4 Lack of data on children.** Reliable information on child labour and those affected by violence is missing and this has been identified by many actors in this area. This has been observed to affect planning and resource allocation. For example, how much resources in terms of manpower and monetary does one allocate when the numbers affected are not known? Thus, lack of data makes it easier for the technocrats in the national treasury to deny funds for these important issues.

*Therefore, it is being recommended that the Government should include data collection on child labour and violence against children in the national data collection system.*



A child involved in the production of ballast for the construction industry. Inconsistencies in laws as well as weak enforcement and implementation of laws put many children at risk of child labour and make protection efforts difficult. (Photo: Courtesy of Terre des Hommes - Netherlands)



# 1.0 INTRODUCTION

## 1.1 Background

Children all over the world continue to be victims of violence and exploitation in the home, at school or within their community, the very settings that are supposed to provide a protective environment for them. Thus, children are to be found working in agriculture, hawking in the streets, being trafficked into prostitution and domestic labour, while others are being sexually abused at home and in schools. This is happening despite the fact that the United Nations Convention on the Rights of the Child (UNCRC) states that all children have the right to be protected against all forms of violence, exploitation and abuse, including sexual abuse and exploitation. The Sustainable Development Goals (SDGs) under target 16.2 also aims at ending abuse, exploitation, trafficking and all forms of violence against children by 2030.

It is estimated that a total of 152 million children aged between 5 and 17 years worldwide (64 million girls and 88 million boys) are in child labour, accounting for almost one in ten of all children worldwide. Nearly half of all those in child labour (73 million children) are in hazardous work that directly endangers their health, safety, and moral development. Children in employment, a broader measure comprising both child labour and other permitted forms of children's employment, number 218 million.<sup>1</sup>

A study by ANPPCAN on the Role of Advocacy and Child Labour (2014), noted that in Kenya most children work in hazardous and exploitative situations. This is because the work that children do is not regulated by labour laws. Children also work long hours, often with little or no pay and experience physical and sexual abuse with those in agriculture being exposed to toxic chemicals, snake bites and are faced with work beyond their capabilities. Children working in agriculture constitute 70% of working children, according to Child Labour Analytical Report (KNBS, 2008).

Factors associated with child labour are many, but the leading ones are poverty within the family level and unemployment. Thus, many children fail to complete their education. Besides, children from poor homes fail to transit to secondary education and vocational training. These children also fail to attend school regularly and eventually drop out of school. This situation has been made worse by HIV/AIDS, which has rendered many children parentless in some parts of Kenya.<sup>2</sup>

On the other hand, violence against children erodes the strong foundation that children need for leading healthy and productive lives. Studies universally show that exposure to violence during childhood can increase vulnerability to a broad range of mental and physical health problems, ranging from anxiety disorders, unwanted pregnancies and depression to cardiovascular disease and diabetes.

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

2 ANPPCAN Role of Advocacy and Child Labour (2014)

Violence against children has profound consequences not only for the child and his or her family but the community and society at large. It raises questions about what is permissible and helps to inculcate beliefs that condone violence in a society, while also leading to repeated cycles of violence targeting a child. Re-victimization and reoccurrence of violence is also possible, and can turn abuse victims into perpetrators of abuse.

Results of the 2014 study based on responses from males and females aged 18 to 24 indicate that lifetime exposure to childhood violence is exceedingly and unacceptably high in Kenya. Nearly one in three females and one in five males experience at least one episode of sexual violence before reaching age 18, an experience that can shape their future in terms of their attitudes towards violence, their adoption of risky behaviors and their emotional health.<sup>3</sup>

### **1.1.1 The Current Situation of Child Labour and other Forms of Violence Against Children**

Although a lot of efforts have been made to reduce poverty in Kenya, Government publications show that poverty is still a problem, where 1 in 5 persons still live on US\$ 1.25 a day, as in other developing countries. According to the World Bank updates, poverty has declined in Kenya from 47% in 2005 to 38% by 2015 (World Bank April 2016). With a population of around 46 million, where some 42% of the population is under the age of 14 years, the country has averaged 5.5% growth rate since 2010, making Kenya become a low middle income country in 2014 (UNICEF, 2015). However, the World Bank still observes that the State needs to deal with the challenges of internal conflicts, vulnerability to terrorism and insecurity, climate risks, harmful cultural practices and gender inequality. All this undermines the equitable realization of children rights.

The World Bank observations are confirmed by the UNDP Reports on Kenya's Human Development Index (HDI), which appears to be extremely slow in human development, pointing to retardation of growth and development. For example, HDI of education stood at 0.584 from 2010 – 2012, while the general HDI stood at 0.511 to 0.519 during the same period. These points to the fact that poverty is still a harsh reality in Kenya and is likely to drive many children from school into child labour, including its worst forms.

According to available information, 32.5% (some 2,943,310) of children of age 6 – 14 are working, while 32.4% of children age 7 – 14 combine work and schooling. This leaves 74.9% of children of age 5 – 14 attending school (UNESCO, 2015). A large number of children working are found doing so under what has been classified as 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, such as, drugs and stolen goods. The majority of children working in Kenya are to be found working in the above sectors most of which constitutes a part of the informal sector, which is not regulated by labour laws.

According to studies, 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 also trafficked within and outside Kenya into worst forms of child labour ranging from domestic work to sexual exploitation and prostitution. In fact, Kenya has been ranked under Tire Two in human trafficking by the US State Department.

### **1.1.2 Efforts currently being made to address the Situation**

Efforts to fight and eliminate child labour started in earnest in 1992 with the introduction of ILO/IPEC programme. The Government has also made concerted efforts to fight poverty in the country, through Vision 2030, based on the Millennium Development Goals (MDGs). The Government has further linked Vision 2030 with Sustainable Development Goals (SDGs) under Economic, Political and Social pillars of the Vision 2030 in 2016. Significant to these efforts, include the formulation and enacting of laws and policies, as well as, initiating programmes to deal with the challenges. Consequently, Kenya has ratified and domesticated almost all of the International Conventions related to protecting children and ensuring that children attend school. Kenyan constitution has also guided the efforts. The ratified conventions that are relevant to child labour and violence against children are:

- United Nations Convention on the Rights of the Child ratified on 30/7/1990
- African Charter on the Rights and Welfare of the Child ratified on 25/7/2000
- ILO Convention 138 Minimum Age ratified on 9/4/1979
- ILO Convention 182 Worst Forms of Child Labour ratified on 7/5/2001
- UNCRC Optional Protocol on Armed Conflict ratified on 28/1/2002
- Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children on 5/1/2005

However, ILO Convention 189 on Domestic Workers and UNCRC Protocol on the Sale of Children, Child Prostitution and Child Pornography are still to be ratified and domesticated in Kenya.

### **1.1.3 The Laws Addressing Child Labour and All Forms of Violence Against Children**

The ratified Conventions have been domesticated in Kenyan laws as follows:

- Children Act (2001) and revised 2016 where children are being protected from child labour and all forms of violence. Under this Act children are guaranteed free and compulsory Basic Education, which includes pre-school (age 4 – 5) to secondary education (12 years of education (up to 17 years)).

- Counter Trafficking in Persons Act (2010) which provides protection of children from being trafficked within and outside Kenya.
- Education Act 2013 and revised 2014, which provides Children in Kenya with free and compulsory Basic Education while aligning other rights accorded to children, such as, the right to protection from exploitation and abuse.
- Employment Act (2007), which clearly states conditions under which children should not work before age 18 years and situations, where children can undertake light work and described later in this report.

### **1.1.4 The Policies and Programmes**

Together with the above laws, Kenya has put in place several policies and programmes as shown below:

- National Action Plan for Elimination of Child Labour (2004 – 2015) which aimed at eliminating the Worst Forms of Child Labour by 2015, where the root causes of child labour, such as, poverty and access to basic education are effectively dealt with, while raising awareness. Since its expiry no action plan has been developed. Its implementation also faced a challenge mainly due to lack of resources.
- National Plan of Action against Sexual Exploitation of Children in Kenya (2013 – 2017) aiming at preventing, protecting and reintegrating child victims of commercial sexual exploitation, as well as, raising awareness.
- Vision 2030: Second Medium Term Plan (2013 – 2017), where child labour is identified as a major challenge in Kenya and aims at finalizing and implementing the National Policy on Child Labour. Efforts have been made in 2016 to mainstream SDGs into Vision 2030, as well as, the Third Medium Term Plan (2018 – 2022) of Vision 2030.
- County Integrated Development Plans which serve as a guide for the development of counties. Here all the 47 Counties in Kenya are required to address child labour targeting the sectors children are working in.
- National Children’s Policy (2010), which seeks to protect children from exploitative labour, human trafficking and commercial sexual exploitation through the enforcement of laws and the provision of services.
- National Education Support Programme (2013 – 2018), which aims to enhance access to quality basic education.
- National Plan of Action for Children in Kenya (2015-2022), which is well informed with the information from studies that have been done on violence against children in Kenya.
- A Framework for the National Child Protection System for Kenya (2011) that describes laws and policies that protect children from violence and exploitation, as well as, roles and responsibilities of the Government to protect children.

### **1.1.5 The Assigned Structures to Address Child Labour and Violence Against Children**

Kenya has gone further and assigned ministries to ensure the implementation and enforcement of the policies and laws mentioned above. As far as child labour and trafficking of children issues are concerned, the following ministries and departments are expected to address them. They are:

- The Ministry of East African Community, Labour and Social Protection. This ministry has labour offices in the 47 Counties. In 2014, the ministry had 95 labour officers. The ministry 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 and has offices dealing with children issues in the 47 Counties in Kenya. It is reported to be having some 500 child protection officers.
- 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.

### **1.1.6 Coordination Mechanisms of Government on Child Protection in the Country**

The Government has mechanisms to coordinate efforts on child labour and violence against children. These are:

- 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

### **1.1.7 Other Groups Working with the Government in Partnership**

In Kenya, one finds vibrant Civil Society Organizations, some of which are involved in the fight against child labour and trafficking of children. Kenya also has the most vibrant employers and workers unions highly rated in sub-Saharan Africa. These are Federation of Kenya Employers (FKE) and Central Organization of Trade Unions (COTU). Both have been actively involved in the fight against child labour. There are

also intergovernmental groups that have been involved in the fight against child labour and violence against children. These are visibly ILO and UNICEF. There are also international NGOs, such as, Save the Children International, OXFAM, World Vision, Care International, Terre des Hommes, ANPPCAN, among others.

From the above, it is clear that there are laws, policies, programmes and structures to eliminate child labour, reduce violence against children and ensure that children access Basic Education, which is free and compulsory in Kenya.

However, this is not the case on the ground and there are challenges, which need to be dealt with. Often, the challenges mentioned are lack of implementation and enforcement of policies and laws. Another major challenge that has been faced most of the time, is inadequate allocation of resources by the Government and efforts being driven by other groups and not the Government, among others. Therefore, the adoption of Sustainable Development Goals (SDGs) by UN member States (governments) is timely and provides an opportunity to deal with gaps hindering performance, that have been ably identified in Kenya.

## **1.2 Terms of Reference**

### **1.2.1 Purpose and Objective of the Review**

The review sought to enhance knowledge on the status of the existing policy frameworks on child protection in Kenya and the extent to which they have been implemented and also the gaps that hinder their effective implementation. Specifically, the review sought to undertake a comprehensive review of key government laws, policies and National Action Plans dealing with child labour, including its worst forms and violence against children to determine:

- a) The state of implementation
- b) Implementing agencies/ actors
- c) Resources allocated
- d) Role of government
- e) How SDGs are covered in the documents

To achieve this objective, ANPPCAN Regional Office with the support of Global March International, engaged the services of a consultant who assisted in obtaining the existing literature on different laws and policies as well as programmes related to the area of interest. The consultant also conducted internet search and accessed additional documents on the subject.

## **1.3 Methodology**

### **1.3.1 Design**

The review adopted an exploratory framework, confirming what exists and its status and moving ahead to examine the extent to which the goals of child protection were being achieved, while identifying gaps that hinder effective implementation.

Further, the consultant sought to establish how resources are allocated, the role the government plays in implementation of these statutes and how Sustainable Development Goals are covered in the documents.

A desk review of literature on child labour and violence against children was also undertaken.



Goat farming, an income generating activity, in one of ANPPCAN's child labour project school. Funds from the IGA are used to buy school uniforms and pay school levies for vulnerable children or those withdrawn from child labour

## **2.0 RATIFIED CONVENTIONS THAT ADDRESS ISSUES OF CHILD LABOUR AND VIOLENCE AGAINST CHILDREN**

### **2.1 UN Convention of the Rights of the Child**

UNCRC is a human rights treaty which sets out the civil, political, economic, social, health and cultural rights of the child. The UNCRC defines a child to be every human being below the age of eighteen (18) years. The UNCRC, in various articles, outlines that state parties should protect children from drugs and substance abuse, child labour, child trafficking, sexual abuse and exploitation.

Article 39 of the UNCRC states that, Governments shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts. Such recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child. Psychosocial support can offer both proactive measures for protection, as well as, healing through resilience building. This can be done through empowering children, families and communities on psychosocial care and support.

Article 19 of the UNCRC states that appropriate legislative, administrative, social and educational measures should be taken so as to protect children from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse. On child labour, Article 32 of the UNCRC states that children have the right to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development.<sup>4</sup>

### **2.2 African Charter on the Rights and Welfare of the Child**

The African Charter on the Rights and Welfare of the Child defines a child as every human being below the age of 18 years. Various articles of the African Charter provide for children's rights to protection and also define responsibilities of various duty bearers. Article 15 states that children should be protected from all forms of economic exploitation and from performing any work that is likely to be hazardous or to interfere with their physical, mental, spiritual, moral, or social development. Article 16 provides for protection of children from all forms of torture, inhuman or degrading treatment and especially physical or mental injury or abuse, neglect or maltreatment including sexual abuse. Article 22 prohibits recruitment of children as soldiers and children taking part in wars.<sup>5</sup>

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4 Convention on the Rights of the Child, 1989

5 The African Charter on the Rights and Welfare of the Child

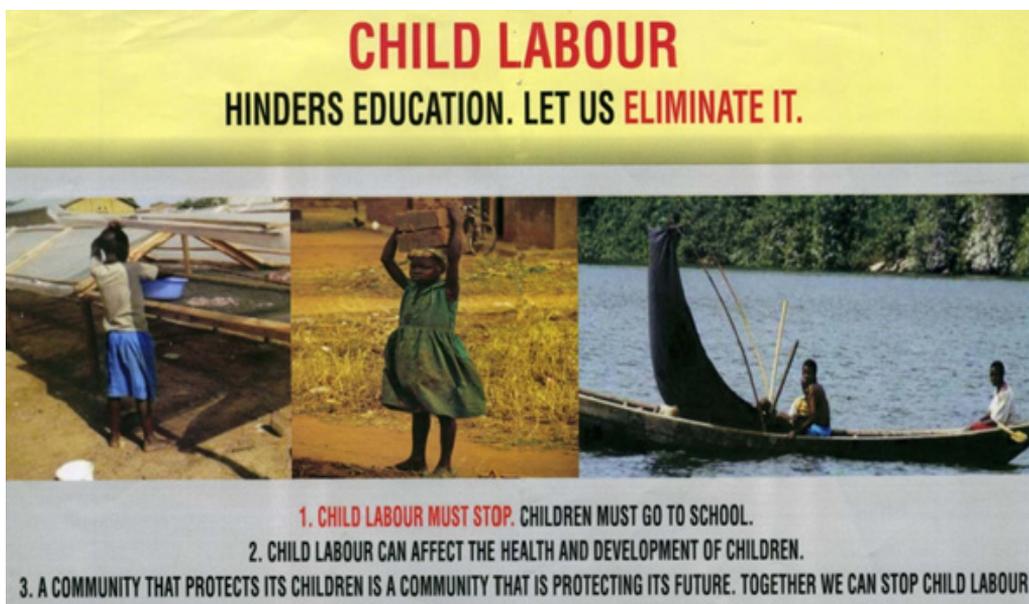
## 2.3 ILO Convention No. 138: Minimum Age

This is concerned with the minimum employment age for children and young persons. The Convention recommends that minimum age of employment for children should not be less than the age of completion of compulsory schooling or less than 15 years. Further the Convention states that the minimum age of children to be employed in risky or dangerous work, or employment should not be less than 18 years. Article 7 of the Convention allows children aged 13 to 15 years to work or be employed in light work as long as this is not harmful to their health and development or does not prevent them from going to school or attending vocational or other training programmes.<sup>6</sup>

## 2.4 ILO Convention No. 182: The Worst Forms of Child Labour

The ILO Worst Forms of Child Labour Convention (1999) was adopted by the ILO Conference at its 87th Session in Geneva on 17 June 1999. It was mainly concerned with banning and abolishing the worst forms of child labour. The Convention has 16 articles. Article 2 of the Convention defines a child as anyone under the age of 18 years. On definition of the worst forms of child labour, article 3 of the Convention states that worst forms of child labour include:-

- Slavery, or where a child is not allowed to go home after work, or forced or made to work, are assigned up in armies or are forced to work in order to clear a debt.
- Recruiting a child for prostitution or sexual activity for entertainment (pornography)



- Recruiting a child for unlawful activities, especially the production and buying or selling drugs as defined in relevant international agreements
- Work which may harm the health, safety and morals of a child, because of its nature or the circumstances under which it is carried out.

**Recommendation 190** whose concern is with the immediate programmes of action for abolishing the worst forms of child labour, focuses on three areas, mainly programmes of action, dangerous work and implementation of Convention 182. Programmes of action should ensure that children are not employed in the worst forms of child labour, and those who are employed should be removed, rehabilitated and helped to fit in with the other members of the society through measures that address their educational, physical and psychological needs. Though children below 18 years should not be employed, the ILO Recommendation 190 states that national laws or regulations or the Ministry of Labour may give permission for employment or work of children over 16 years if their health, safety and morals are protected.<sup>7</sup>

## 2.5 ILO Convention No. 189: Domestic Workers

This Convention was adopted in June 2011 by the government, worker and employer delegates of the ILO on Decent Work for Domestic Workers aimed at improving the working and hiring conditions of domestic workers worldwide, where the majority are children. This Convention entered into force in 2013 and Kenya has still to ratify it, despite the reality that, domestic work, is the second largest sector, where many children work.

## 2.6 UNCRC Optional Protocol on Involvement of Children in Armed Conflict

The UNCRC Optional Protocol on the Involvement of Children in Armed Conflict aims at protecting children from recruitment and use in hostilities. The Optional Protocol calls on State Parties to ensure that persons who have not attained the age of 18 years are not compulsorily recruited into armed forces.<sup>8</sup> Article 38, paragraph 3 of the Convention on the Rights of the Child provides for recruitment of persons who have attained the age of 15 into armed forces<sup>9</sup>. However, the UNCRC Optional Protocol on Armed Conflict urges the State Parties to recognize that persons under eighteen years are entitled to special protection, such as, the State Parties should raise the minimum age for the voluntary recruitment into the national armed forces.<sup>10</sup>

<sup>7</sup> Ibid page 30-32

<sup>8</sup> UNCRC Optional Protocol on Armed Conflict Article 2

<sup>9</sup> UNCRC Article 38 par. 3

<sup>10</sup> UNCRC Optional Protocol on Armed Conflict Article 3

## 2.7 Protocol to Prevent, Suppress and Punish Trafficking in Persons especially of Women and Children (Parlemo Protocol Nov. 2000)

The purpose of this Protocol is to prevent and combat trafficking in persons, paying particular attention to women and children; protect and assist the victims of such trafficking, with full respect of their human rights; and to promote cooperation among States Parties, in order to meet those objectives.<sup>11</sup> Article 3 (a) defines “Trafficking in persons” as the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation.

- (a) Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs;
- (b) The consent of a victim of trafficking in persons to the intended exploitation set forth in subparagraph (a) of this article shall be irrelevant where any of the means set forth in subparagraph (a) have been used;
- (c) The recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered “trafficking in persons” even if this does not involve any of the means set forth in subparagraph (a) of this article;
- (d) Under Article 3, a child is defined as any person below the age of 18 years.

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11 United Nations Convention Against Transnational Organized Crime and the Protocols Thereto

## 3.0 LAWS ADDRESSING CHILD LABOUR AND ALL FORMS OF VIOLENCE AGAINST CHILDREN IN KENYA

### 3.1 Children Act, 2001

The Children Act, Section 10, provides that every child shall be protected from economic exploitation and any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development. The Act defines child labour as any situation, where a child provides labour in exchange for payment and includes:

- Any situation, where a child provides labour as an assistant to another person and his labour is deemed to be the labour of that other person for the purposes of payment;
- Any situation, where a child's labour is used for gain by any individual or institution whether or not the child benefits directly or indirectly; and
- Any situation, where is in existence a contract for services where the party providing the services is a child whether the person using the services does so directly or by agent.

Bonded labour does not exist in Kenya. But parents, who are poor, send their children to stay with economically able relatives to educate them. In this process, children provide services as domestic workers, instead of attending school. In few cases, these relatives pay tokens to the parents of the children's labour. Often the children are subjected to long working hours and abuse, as is the practice in domestic work.

The Children Act, further, provides that no child shall take part in hostilities or be recruited in armed conflicts, and where armed conflicts occur, respect for and protection and care of children shall be maintained in accordance with the law. On protection against violence, Section 1 of Article 13 of the Act, stipulates that a child shall be entitled to protection from physical and psychological abuse, neglect and any other form of exploitation including; sale, trafficking or abduction by any person.

The Act, in Article 14, prohibits harmful cultural practices and stipulates that no person shall subject a child to female circumcision, early marriage or other cultural rites, customs or traditional practices that are likely to negatively affect the child's life, health, social welfare, dignity or physical or psychological development. Further, the Act in Article 15 provides for the protection of children from sexual exploitation and use in prostitution, inducement or coercion to engage in any sexual activity, and exposure to obscene materials. Article 18 protects children from torture and states that no child shall be subjected to torture, of cruel treatment or punishment, unlawful arrest or liberty, deprivation of liberty. Also, no child shall be subjected to capital punishment or to life imprisonment.<sup>12</sup>

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<sup>12</sup> Republic of Kenya. Children Act 2001

Article 20 of the Act states that, notwithstanding penalties contained in other law, any person willfully or as a consequence of culpable negligence infringes any of the rights of a child as specified in sections 5 to 19, such a person is liable to a term of imprisonment not exceeding 12 months or to a fine not exceeding KShs. 50,000 or to both imprisonment and fine. Although Children Act is being rewritten, the penalty presented may not have much weight in deterring the perpetrators.

### **3.2 Sexual Offences Act, 2006**

The Sexual Offences Act (2006) prohibits defilement and sexual exploitation of children, including child sex tourism, child prostitution, child pornography and acts that promote sexual offences with children in Kenya. A child here is any person under age 18 years. The penalty prescribed for any person found to participate in sexual exploitation is a jail term of up to a maximum of ten years. In cases of defilement the penalty is a term not less than 15 years and can be enhanced to imprisonment.<sup>13</sup> The challenge is that most of these cases take too long and in some cases the parents or guardians collude with the perpetrators and settle the cases out of the courts. Counseling services to the victims are not readily available in most situations in Kenya and often the victims are left to bear the burden. Few are also taken to hospitals as one has to pay for services. There is also stigma associated with sexual abuse and the victims are blamed. This interferes with reporting of many cases of sexual exploitation.

### **3.3 Employment Act, 2007 (Revised 2012)**

The Employment Act defines a child as a person who has not attained the age of 18 years. The following are sections from the Employment Act of the laws of Kenya that are concerned with employment of children. Section 53 on prohibition of worst forms of child labour states that notwithstanding any provision of any written law, no person shall employ a child in any activity which constitutes worst form of child labour. The Employment Act 2007 (Revised 2012) defines worst forms of child labour to include; commercial sexual exploitation, use in illegal activities, such as, drug trafficking, begging, street vending, domestic service, herding livestock, fishing, mining, work on tobacco and sugarcane farms.

Section 56 on prohibition of employment of children between thirteen (13) and sixteen (16) years of age, states that no person shall employ a child who has not attained the age of 13 years, whether gainfully or otherwise in any undertaking. However, a child of between 13 and 16 years of age, may be employed to perform light work which is not likely to be harmful to the child's health or development; and not such, as to prejudice the child's attendance at school, his participation in vocational orientation or training programmes approved by the Minister or his capacity to benefit from the instructions received. The section further, empowers the Minister to make rules prescribing light work in which a child of between 13 and 16 years of age may be employed under terms and conditions of that employment.

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<sup>13</sup> Republic of Kenya, Sexual Offences Act No. 3 of 2006 Revised Edition 2014 articles 12,14,15,16

It is worth noting, that this section prohibits employing a child below 13 years to any form of undertaking. However, it allows employment of children from the ages of 13 to 16 years for light work and defines those of 16 to 18 as employable. The Act does not define light work and does not provide protection for children in such employment, but leaves it at the discretion of the Minister, once more, the Act does not relate well with Education Act, where Basic education is supposed to be compulsory. Thus, allowing children in both upper primary and secondary schools to go and work, a thing that maintains the status quo of child labour in Kenya.

Section 57 prohibits written contracts for child between 13 and 16 years of age and states that subject to the provisions of the Industrial Training Act relating to contracts of apprenticeship or indentured learnership, a person who employs a child of between thirteen and sixteen years of age, or causes such a child to be employed, or being the parent or guardian or other person having, for the time being, the charge of or control over the child, allows the child to be employed, otherwise than under a verbal contract of service, commits an offence and shall on conviction be liable to a fine not exceeding one hundred thousand shillings or to imprisonment for a term not exceeding six months or to both.

Section 58 restricts employment of children of between thirteen and sixteen years of age in an industrial undertaking and in any opencast workings or sub-surface workings that are entered by means of a shaft or a lift. This, however, is allowed for children serving under a contract of apprenticeship or indentured learnership in accordance with the provisions of the Industrial Training Act.

Section 59 stipulates that no person shall employ a child in an industrial undertaking between the hours of 6.30 p.m. and 6.30 a.m. However, a person may employ a male young person in cases of emergencies, which could not have been controlled or foreseen, and which interfere with the normal working of the industrial undertaking and which are not of a periodical nature. This section further empowers the Minister to authorize an employer in writing to employ a young person for a specific period of the night subject to such conditions as the Minister may determine.<sup>14</sup> By and large the Employment Act 2007 (Revised 2012) does not allow children up to 16 years to work under industrial undertaking apart from when they are under training. The penalty for doing so is a fine of KShs 200,000 to one year imprisonment or both.

It is worth noting that the Employment Act 2007, both prohibits and allows employment of children below the age of 18 years. Section 56 prohibits employing a child below 13 years in any form of undertaking. However, it allows employment of children from the ages of 13 to 16 years for light work, and defines those of 16 to 18 as employable. The Act does not clearly define the limits for this employment. It does not define light work and does not provide protection for children in such employment, but leaves it to the discretion of the Minister.

In Section 58 and 59, the minimum age for employment in an industrial undertaking is 16, unless the child is an apprentice under the Industrial Training Act (Cap. 237,

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<sup>14</sup> Republic of Kenya, Employment Act Cap 226 2007 Revised Edition 2012

Laws of Kenya). This minimum age restriction does not apply to employees who belong to the same family as the employer - unless the undertaking is dangerous to the life, health or morals of the persons employed. There is no legal minimum working age in the agricultural and services sectors, or for domestic work. The law also puts a time limit for a child in an industrial undertaking to between 6.30am to 6.30pm.

It is worth noting that there is need to question to what extent the Employment Act is protective to the child in terms of prohibiting child labour. This is because, the Act assumes that most children are employed in formal settings. This is not the case because there are many children working in the non-formal sector, known as jua kali in Kenya. Children hawk, transport goods (some illicit) and beg in this sector. Also, children who complete class eight and fail to continue to secondary school are in domestic employment, which currently, is not guided by any law. Further, by providing for circumstances, where children, as young as 13 years may be employed, it becomes difficult to implement the laws on child labour. The Act also allows children to work within the family without clearly defining what work children should be doing in their families.

### **3.4 Counter Trafficking In Persons Act, 2010**

This is an Act of Parliament to implement Kenya's obligations under the United Nations Convention against Transnational Organized Crime particularly its Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children; to provide for the offences relating to trafficking in persons and for connected purposes.

Subsection 1 of Article 3 on trafficking in persons states that a person commits the offence of trafficking in persons when the person recruits, transports, transfers, harbours or receives another person for the purpose of exploitation by means of threat or use of force or other forms of coercion; abduction; fraud; deception; abuse of power or of position of vulnerability; giving payments or benefits to obtain the consent of the victim of trafficking in persons; or giving or receiving payments or benefits to obtain the consent of a person having control over another person.

Subsection 3 of Article 3 defines "trafficking in persons" to include the recruitment, transportation, transfer, harbouring or receipt of a child for the purposes of exploitation. Section 4 of the Counter Trafficking in Persons Act 2010 prohibits acts that promote child trafficking. It calls for punishment of persons who for the purpose of trafficking in persons adopts, fosters or offers guardianship to a child, or offers a child for adoption, fostering or for guardianship, or initiates or attempts to initiate adoption, fostering or guardianship. Such a person is liable to imprisonment for a term of not less than thirty years or to a fine of not less than twenty million shillings or both, upon subsequent conviction, to imprisonment for life.<sup>15</sup>



15 Republic of Kenya, Counter Trafficking in Persons Act (2010)

### **3.5 The Constitution of Kenya, 2010**

The Constitution of Kenya 2010 defines a child as an individual who has not attained the age of eighteen years.

The Constitution protects children of Kenya from all forms of exploitation and abuse. For example corporal punishment is unlawful and it is prohibited in Kenya. Article 29 of the Constitution 2010 states that every person “has the right to freedom and security of the person, which includes the right not to be subjected to any form of violence from either public or private sources; subjected to torture in any manner, whether physical or psychological; subjected to corporal punishment; or treated or punished in a cruel, inhuman or degrading manner.” Part (d) of section 1 of Article 53 provides that every child “has a right to be protected from abuse, neglect, harmful cultural practices, all forms of violence, inhuman treatment and punishment and hazardous or exploitative labour.”

On economic and social rights, the Constitution states that every person has the right to the highest attainable standards of health, which includes the right to health care services, including reproductive health care, accessible and adequate housing, and to reasonable standards of sanitation, be free from hunger, and to have adequate food of acceptable quality, clean and safe water in adequate quantities, social security and education. It also stipulates that it is the duty of the State to provide appropriate social security to persons, who are unable to support themselves and their dependants.<sup>16</sup>

However, the implementation of the Constitution is still to be realized as it is supposed to inform the laws and policies on children. The state agencies, especially the police are still to appreciate the provisions in the Constitution, especially in situations of protest as recently happened in Kenya, leading to some children losing their lives during the riots.

### **3.6 Basic Education Act No. 14 of 2013 (Revised 2017)**

The Basic Education Act defines a child as any person below the age of 18 years. Part IV on free and compulsory education of the Basic Education Act demands that every child has a right to free and compulsory basic education. The Act also in section 38 Prohibits against employment of a child of compulsory school age and stipulates that no person shall employ a child of compulsory school age in any labour or occupation that prevents such child from attending school. Further, any person who employs or prevents a child who is subject to compulsory school 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. The Basic Education Act also states that it is the responsibility of the Cabinet Secretary to provide free and compulsory basic education to every child and to ensure compulsory admission and attendance of children of compulsory school age at school or an institution offering basic education.

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<sup>16</sup> Republic of Kenya (2010). *The Constitution of Kenya*

On prohibition against physical punishment and mental harassment to the child, subsection 1 of section 36 of the Basic Education Act, states that no pupil shall be subjected to torture and cruel, inhuman or degrading treatment or punishment, in any manner, whether physical or psychological. Further, a person who contravenes the provisions of subsection 1 commits an offence and shall be liable on conviction to a fine not exceeding one hundred thousand shillings or to imprisonment not exceeding six months or both.

Although, the basic education is free and compulsory and aims at ensuring inclusivity and quality education for all children by 2030, school administrators are allowed to charge other forms of school levies with the permission of the Cabinet Secretary or school management boards.<sup>17</sup> This is a provision that may lead to children from poor families drop out of school and join the labour market. Besides, parents are still expected to buy uniforms and pay for myriads of school activities, which often drive many children out of school in Kenya.

### **3.7 Social Assistance Act, 2013**

This is an Act of Parliament to give effect to Article 43(1)(e) of the Constitution; to establish the National Social Assistance Authority; to provide for the rendering of social assistance to persons in need and for connected purposes. The Act defines a child as any person under the age of 18 years. The Act further interprets “financial assistance” to mean a type of social assistance provided as:

- (a) Payment for food, shelter, clothing, fuel, utilities, household supplies and personal requirements;
- (b) Payment for special needs of the kind prescribed by the regulations;
- (c) Payment for care in residential institutions;
- (d) Payment for travel and transportation expenses;
- (e) Payment for funeral and burial expenses;
- (f) Payment for health care services; and
- (g) Comfort allowances and allowances for other needs of residents of residential institutions.

On social assistance to persons in need, section 17 outlines the persons in need to include:

- (a) Orphans and vulnerable children;
- (b) Poor elderly persons;
- (c) Unemployed persons;
- (d) Persons disabled by acute chronic illnesses;
- (e) Widows and widowers;
- (f) Persons with disabilities; and
- (g) Any other persons as may from time to time be determined by the Minister, in consultation with the Board.

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**17** Republic of Kenya, Education Act No. 14 of 2013

The Act also highlights the sources of the Fund to include;

- (a) Any funds provided by bilateral or multilateral donors, for the purpose of the Fund;
- (b) Monies that may accrue to or vest in the Authority in the course of the exercise of its functions under this Act;
- (c) Gifts, grants, donations or endowments as may be given to the Authority;
- (d) Monies that may be borrowed by the Authority for the discharge of the functions of the Authority;
- (e) Fees for services rendered to any designated institution in terms of a service agreement; and
- (f) Monies from any other source provided for the Authority.<sup>18</sup>

It is worth noting that the Social Assistance Act indicates the Government of Kenya's intention to provide social protection to those persons in need. However, this may be hindered by lack of enough financial resources, which may be as a result of over dependency on donor funding and grants, with concomitant implications of implementation of good intentions.

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18 Republic of Kenya 2013). Social Assistance Act 2013

## **4.0 POLICIES AND PROGRAMMES ADDRESSING CHILD LABOUR AND VIOLENCE AGAINST CHILDREN**

### **4.1 Sessional Paper No. 1 of 2015 on the National Policy on Elimination of Child Labour**

The Sessional Paper no. 1 of 2015 on the National Policy on Elimination of Child Labour acknowledges that though a number of interventions have been taken to address child labour in Kenya, no sustained progress towards total elimination of all forms of child labour has been realized. It outlines challenges facing the effective and sustainable reduction of child labour in Kenya to include; low levels of economic development, high incidences of poverty, unemployment, challenges in the education sector, and inconsistency in legislation.

Further, rural urban migration, social cultural practices, lack of up-to-date data on child labour, non-comprehensive social protection system, HIV and AIDS, trafficking in person, weak enforcement of laws and regulations, low financing of child labour interventions, weak policy and institution mechanism to support initiatives aimed eliminating child labour in Kenya, hinder effective elimination of child labour.

The main goal of the National Policy on Elimination of Child Labour in Kenya is to protect all children from all forms of child labour, and promote holistic development of the children. The Policy seeks to eliminate all forms of child labour through establishing and maintaining an up to date and reliable database on child labour, mainstream elimination of child labour in national, county and sectoral policies and programmes and harness stakeholder efforts towards elimination of all forms of child labour.<sup>19</sup>

Among the strategies the Policy outlines to achieve a child labour free nation is by enforcing Employment Act 2007 that restricts employment of children aged 13 to 15 to light work only. But the policy defines a child as any person below 18 years. Allowing children below 18 years to be employed, denies them a chance to access free and compulsory basic education. Also, it contradicts the mission and the goal of the Policy which is 'To develop and promote comprehensive strategies and interventions for effective elimination of all forms of child labour and 'To protect all children in Kenya from all forms of child labour, and promote holistic development of the children' respectively. This is because "light work" is a form of child labour and since the vision of this Policy is to have a child labour free society, it should be its first priority to ensure that all children of school going age are in school and not engaged in any form of employment, including light work."

The Policy, further, states that those children below the minimum age for employment, but are out of school, will be required to undergo a compulsory

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<sup>19</sup> Republic of Kenya (2015). Sessional Paper no. 1 of 2015 on the National Policy on Elimination of Child Labour

vocational training and apprenticeship. To note is that the Policy acknowledges the age of a child as defined by the Constitution of Kenya to be any person below 18 years. However, this Policy is silent on who a child is in relation to work. One of the challenges that hinder effective elimination of child labour in Kenya, as noted by this Policy is low financing of child labour initiatives. It is worth noting this Policy, leaves out the Ministries of Finance and Planning, as some of the key responsible agencies, in its implementation. For there to be adequate financial support in implementation of this policy, the Ministry of Finance should be involved, as this is the Ministry that controls financial aspects of a nation. Besides, this policy does not include the Ministry of Agriculture, yet agriculture is identified as hazardous areas children should not work.

## **4.2 The Kenya National Children Policy, 2010**

The Kenya National Children Policy 2010 defines a child, as any person under the age of 18 years. It provides that all children, especially those with disabilities and those with special needs have a right to be protected from any harm that may interfere with their growth and development. The policy also proposes actions that ensure that children access birth registration and identity cards when they come of age.

On child labour, the policy states that all children have the right to be protected from work that threatens their wellbeing, which includes; health, education, growth and development. The policy, further, suggests appropriate measures for this protection to include; advocacy programmes that prevent and protect children from child labour, provision of social protection services, access to legal services if needed to poor families, which includes orphans and vulnerable children. These children are supposed to be provided with services, such as, transfer funds and bursaries to access education and vocational training, as well as, food and clothing.<sup>20</sup>

## **4.3 Gender Policy in Education, 2007**

The main objective of this policy is to promote access, retention, transition, vocational training and achievement in all levels of education, particularly with regard to the girl child. The policy informs that among the poor, children, and especially girls, are often withdrawn from school to engage in domestic work, while boys drop out of school to work in commercial farms, fishing and petty businesses. Further, the inability of the poor to meet educational costs for all their children is a barrier to education of girls. The policy notes that the introduction of FPE in 2003, raised the GER for both boys and girls in public primary schools. It instructs the Ministry of Education to work with other partners to ensure the implementation of the policies and advocates for gender inclusiveness.<sup>21</sup>

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20 Republic of Kenya, The National Children Policy, 2010

21 Republic of Kenya, Gender Policy in Education 2007

## **4.4 Vision 2030: Second Medium-Term Plan (2013 – 2017)**

The second Medium Term Plan of Vision 2030 identifies key policy actions, reforms, programmes and projects that the Government of Kenya implemented in the 2013-2017 period. On child labour, the major goal was to eliminate the worst forms of child labour by 2015 with a strategic objective of creating child labour free zones and a strategic thrust of expanding programmes for elimination of child labour. The indicative budget towards realization of this goal was Kshs. 875 million with the sources of funds to come from the Government of Kenya, Development Partners and the ILO.<sup>22</sup>

The Third Medium Term Plan (2018 – 2022) of the Vision 2030 has been prepared, where the targets of Sustainable Development Goals (SDGs) have been mainstreamed. A review of the Second Medium Term Plan (2013 – 2017) in 2016, while appreciating progress, still identified challenges related to resources and the participation of stakeholders, which needed to be enhanced to ensure implementation of the Third Medium Term Plan.

## **4.5 National Plan of Action for Elimination of Child Labour (2004 – 2015)**

The Action Plan was meant to serve as a primary government instrument to prevent and eliminate the worst form of child labour in Kenya by 2015. It targeted populations such as orphans and vulnerable children, HIV/AIDS affected children, as well as, marginalized populations in rural Kenya. It was supposed to address the root causes of child labour in Kenya, such as, poverty, lack of access to education and weak government institutions. The Plan prioritized law enforcement, awareness raising and universal basic education for children as strategies for implementation.

The Plan established Child Labour Division within the Ministry of Labour with the role of coordinating child labour activities in the country. But the Division was not provided with the resources, despite the many roles and responsibilities the Division had been assigned. The implementation of the Action Plan depended on the ILO-IPEC Time-bound Programme, better known in Kenya, as USDOL, which started to operate in Kenya since 2005. It is not clear how the Action Plan benefited from the US\$ 5 million of the Time-bound Programme (TBP) the government launched in Kenya in 2005, with the collaboration of ILO-IPEC.

The Action Plan was revised in 2009 – 2015, with the aim to focus its activities and to strengthen the systems that had been created to address child labour in the country. ILO supported the Government of Kenya to develop the National Action Plan in 2004 according to the records. However, according to the US Department of Labour Report (2016) the Government of Kenya had not committed sufficient resources as expected in the Action Plan and many children in Kenya are still

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22 Republic of Kenya, vision 2030: Second Medium-Term Plan (2013-2017)

working in worst forms of child labour, such as, in agriculture, commercial sexual exploitation, child prostitution and pornography.

The report, however, noted that the Kenya Parliament had passed Child Labour Policy in 2016 (the National Policy on Elimination of Child Labour) and the Police Department has established a new Child Protection Unit to investigate cases of exploitation, such as, commercial sexual exploitation (US Embassy in Kenya, 2016).

#### **4.6 National Plan of Action against Sexual Exploitation of Children in Kenya (2013 – 2017)**

The National Plan of Action against Sexual Exploitation of Children (SEC) in Kenya has been developed around the areas of prevention, protection, recovery and reintegration, coordination and cooperation, child participation, as well as, monitoring and evaluation. Its main focus is on identification, prevention, protection, rehabilitation and reintegration of child victims of sexual exploitation. It emphasizes on identifying children engaged in sexual exploitation, raising the awareness of community leaders, parents, and tourism employees on sexual exploitation in children; and implementing programs to assist the victims. The Plan of Action does not include the budget needed to effectively implement the projects and also leaves out the Ministry of Finance as one of the key actors, which allocates resources for government programmes.

Some of the achievements in the prevention of sexual exploitation of children include; success in creation of awareness about sexual exploitation of children and the creation of the Child Helpline 116, establishment of offices in 153 districts out of 264 districts, where children officers actively handle child protection matters.

Some of the challenges highlighted by this Plan of Action, include; the increased number of children involved in sexual exploitation and the challenge in identification and prevention of cases of SEC, which is limited due to lack of data. This has been contributed by ignorance, lack of reporting and secretive nature of the crime.<sup>23</sup>

#### **4.7 National Plan of Action for Children in Kenya (2015 – 2022)**

The NPA 2015-2022 which has been aligned to the Constitution of Kenya 2010 is designed to contribute to the realization of the goals of Kenya Vision 2030 and also incorporates the Sustainable Development Goals (SDGs), which have replaced the Millennium Development Goals (MDGs) that contain a wide range of proposed activities aimed at safeguarding children's rights to survival, development, protection and participation.

The NPA provides an operational framework to guide stakeholders and partners in coordinating, planning, implementing and monitoring programmes for the

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<sup>23</sup> Republic of Kenya, National Plan of Action against Sexual Exploitation of Children of Kenya (2013-2017)

child and also outlines priorities and interventions necessary for the progressive realization of children's rights in Kenya. It aims at coordinating and integrating ongoing sector-specific efforts to avoid any overlap and to ensure optimization of resources and benefits for children and young people in Kenya.

The overall management, oversight and coordination of the NPA is given to the National Council for Children's Services (NCCS) with support from relevant stakeholders as stipulated in the framework. These are Ministry of Health (MOH), NCCS, World Health Organization (WHO), United Nations Children Fund (UNICEF), National Council for Persons with Disabilities (NCPD), CBOs, FBOs, Stakeholders, MOE, County governments, development partners, CSO, private sector, Ministry of Interior, Ministry of Information and Tourism, Ministry of Culture and Sports, Media Council, Communication Council of Kenya. Film Censorship Board, Kenya National Library Services (KNLS).

Further, it complements and integrates ongoing government sector-specific plans, development partner plans including UN agencies, non-state actors and other key stakeholders working with and for children. There are emerging issues, anticipated challenges and risks in the actualization of this NPA. These include:

- Inadequate disaggregated data and information from various regions and sectors to inform the Plan on situations of various categories of children.
- Weak enforcement of legislation and policies.
- Inadequate coordination of services among key stakeholders in the children sector.
- Inadequate resources to implement the planned activities.
- High levels of poverty as 46% of the population lives below the poverty line and may not be able to contribute to the realization of the Plan.<sup>24</sup>

## **4.8 Framework for the National Child Protection System for Kenya, 2011**

The Framework for National Child Protection System for Kenya (2011) describes the existing laws and policies that protect children from violence and exploitation in Kenya, and the roles and responsibilities of the Government to protect children from exploitative work. The goal of the Framework was to promote linkages between different actors and provide coordinated interventions and responses through a statutory mechanism. The Framework summarizes the key components of the child protection system to include:

- A set of laws and policies that protect children from violence and exploitation and ensure responses to the best interests of the child
- A central government coordination mechanism, that brings together government departments and key stakeholders at all levels
- A centralized management information system that ensures regular information on both prevalence and knowledge of child protection issues

<sup>24</sup> Republic of Kenya, National Plan of Action for Children in Kenya (2015-2022)

- Services and responses that are effectively regulated, including accreditation and licensing of care providers
- Adequate and appropriate resource allocation
- Effective regulation including standards
- monitoring and evaluation
- A committed workforce with relevant competencies and mandates
- Opportunities for children to express their views and be involved

The Framework singles out the Ministry of Finance as the one with the main responsibility of ensuring that the state allocates adequate financial resources to child protection, ensuring thorough audits that allocated resources are properly used for the intended purposes, control inflation, so as, not to hinder realization of child's rights due to high cost of living and to ensure the long-term protection of children from unreasonable national debt burden.<sup>25</sup>

The Ministry of Labour is also singled out as mandated to enforce labour laws, promote safety and health of employed children and develop and coordinate the implementation of relevant policies. The Ministry of Labour is also assigned to define work considered harmful to a child's health, development, safety or morals, ensure that every child is protected from economic exploitation and enforce part VII of the Employment Act 2007 on employment of children. This is another incidence of legalization of employment of children.<sup>26</sup>

## 4.9 National Education Sector Plan (NESP) (2013 – 2018)

The National Education Sector Plan is a five year Plan that outlines the education sector reform implementation agenda in six priority areas which include; Sector Governance and Accountability, Quality, Access, Equity, Relevance and Social Competencies and Values. One of the goals of NESP is to have a schooling system that delivers the compulsory core curriculum in a safe, secure and enjoyable environment, through a network of learning pathways that meet the individual's needs and academic, professional and technical aspirations, as well as, supporting national social and economic goals.

The Plan notes that the net enrolment rate increased from 82.8% in 2005 when the FPE policy was introduced to 95.3 percent in 2012. Further, gender parity in access also improved at primary level, increasing from 0.95 in 2005 to 0.97 in 2010. However, a worrying trend is the rise in drop-out rates and unsatisfactory progression levels. Although the primary school completion rate increased from 77.6 percent in 2005 to 83.2 percent in 2009 it dropped to 80.3 percent in 2011<sup>27</sup>. According to NESP, the decline could be attributed to among other factors, such as, the effect of additional levies being charged at the school level.

<sup>25</sup> Republic of Kenya, Framework for the National Child Protection System (2011)

<sup>26</sup> Ibid

<sup>27</sup> Republic of Kenya, National Education Sector Plan 2013-2018

In making education a catalyst for national development, the NESP goal of enhancing quality basic education for Kenya's sustainable development, will enable the country to achieve the national goals of education and in turn attain the SDG goal 4 on ensuring inclusive and equitable quality education and promotion of lifelong learning opportunities for all.<sup>28</sup> Some of the policy concerns as noted in the National Education Sector Plan include:

- The high cost of schooling, due to inadequate resources for the provision of quality education, making schools to introduce unauthorized levies, other indirect costs, such as, uniforms and other related costs, are areas of uncontrolled expense.
- Unsatisfactory progression, both within and between education cycles. In 2003 at the onset of FPE initiative, over 1 million pupils were enrolled in standard 1, of whom about 741, 500 completed standard 8, representing a completion rate of approximately 76.8 percent. Also, only 6.5 percent of students completing secondary education progress to higher or tertiary education. This wastage has led to loss of potential human resource in the country, and it is a sign of an inefficient education sector.
- A major challenge as highlighted in the NESP, is that of educational wastage in terms of high repetition and drop-out rates, as well as, high numbers of children out of school, due to diverse factors, such as, user charges being levied, teenage pregnancies, child labour levels, and cultural practices, such as, female circumcision and early marriages that impact negatively on school attendance. This is demonstrated by reports that some 35.6% of children aged 5 – 14 (3,736) are working in Kenya.<sup>29</sup>
- Education has been the main tool of intervention in addressing child labour. It is pivotal to eliminating and preventing child labour, to establishing a skilled workforce, and to promoting development based on the principles of social justice and human rights. Global efforts to achieve Education for All (EFA) and the progressive elimination of child labour are inseparable. This is because while education is an essential tool in preventing child labour, child labour is a major obstacle to the achievement of EFA, since children who are working full time cannot go to school. The educational achievement of those who combine work and school will suffer, and there is a strong likelihood that they will drop out of school in order to go into full-time employment.

The Government of Kenya in its efforts to implement SDGs has mainstreamed the goals into the government policies, planning, budgeting, monitoring and evaluation systems and processes through its Ministries, Departments and Agencies (MDAs). The MDAs have been directed to mainstream SDGs into their National Strategic Plans and provide quarterly reports of implementation.<sup>30</sup> As such, there is need to follow up with key Ministries on Education to ascertain the level of integration SDGs 4, 8.2 and 16.2.

28 UN 2030 Agenda for Sustainable Development

29 United States Department of Labour 2017.

30 <http://sustainable.development.un.org/memberships-tales/Kenya>

## 4.10 The Teachers Service Commission (Code of Conduct and Ethics for Teachers) Regulations, 2015

Efforts to protect children in school systems are well illustrated by the Code of Conduct and Ethics for teachers. According to Article 22 teachers are prohibited from sexual engagement with learners and states that a teacher shall not engage in any sexual activity whatsoever with a learner, regardless of whether the learner consents; make a request to or exert pressure on a learner for sexual activity or favour; or flirt with a learner. Further, a teacher is prohibited from inducing, coercing, threatening or intimidating a learner in any way and particularly in regard to their academic performance, in exchange for sexual relations; facilitate non-disclosure or cover up of cases of sexual abuse against a learner.

Article 25 on pornography states that; it is the duty of a teacher to ensure that his or her station of work is free of pornography and pornographic material. Further, a teacher shall not supply pornographic materials to a fellow employee, a learner or a member of the public; expose a learner to pornography, sexual toys or assist a learner in obtaining access to the same, sell, let to hire, distribute, exhibit or in any manner, put into circulation or make, produce or have in his or her possession any pornographic book, pamphlet, paper, drawing, painting, art, representation, figure or any other obscene object.

Section 140 highlights the offences that may lead to disciplinary action to include; among others; immoral behavior, including; but not restricted to (i) sexual intercourse; (ii) sodomy; (iii) lesbianism; and (iv) sexual intercourse or flirtation.

Section 141 on offences that may lead to removal from the Register, the Act stipulates that among other offences the teacher may be removed from the Register, if the teacher engages in immoral behavior with or towards a learner, which may, include, but not limited to: (i) sexual intercourse or sexual abuse; (ii) sodomy; (iii) lesbianism; and (iv) sexual harassment or flirtation.

However, removal of a teacher from the register is not punishment strong enough to deter a teacher from such acts since the affected teacher can simply look for a job in other sectors. This needs to be reviewed so teachers can be taken to court and punished through the legal system.

## 4.11 Other Government Efforts: Existing Social Protection Initiatives

**Devolved Funds:** This includes the Constituency Development Fund (CDF), Bursary Fund, Youth and Women funds which targeted achievement of MDGs. This has resulted in the improvement in the wellbeing of families in Kenya. This is demonstrated by the increase in enrolment in primary and secondary education in the country. But there are reports that in some constituencies this fund is not effectively utilized. The monitoring of this important effort to keep children from

work needs to be closely followed. There is also need to review the contribution of the fund to SDGs in the future.

**Uwezo Fund:** This was established in 2014 with the objective of expanding access to finances for youth and women in business. There have been reports of this fund being mismanaged and the beneficiaries are not necessarily youth coming from poor communities.

**Women Enterprise Fund (WEF):** This is one of the flagship projects under vision 2030. Amount of Government loans disbursed through WEF increased from Kshs 169 million in 2014 to Kshs 524 million in 2015. This effort is supposed to improve incomes at family level, where those participating can undertake economic activities that bring money to enable parents feed and send their children to school.

**Social Protection Fund:** This was established to facilitate access to credit and cash transfers in a bid to attain a meaningful and better quality of life of poor and vulnerable individuals in the society. The beneficiaries of this fund are the elderly aged 65years and above and orphaned and vulnerable children. Due to the increased number of beneficiaries, in year 2015/16, the funds allocated for older people 7,966.3 million with a direct disbursed amount of Kshs 7,334.5 million during the same period, the funds allocated for the OVC increased from Kshs 5,957.6 million 2014/2015 to Kshs. 9,743.3 million in 2015/2016, an increase of 63.6 per cent.<sup>31</sup>

**The Hunger Safety Net Programme 2 (HSNP2):** This is one of the four government Cash Transfer programmes under the National Safety Nets Programme (NSNP). The programme has been implemented in two Phases. Phase 1, starting with a pilot one from 2008-2012, funded by DFID and Australian Department for Foreign Affairs and Trade (DFAT). Phase two (HSNP2) of the programme started in 2013 - 2018, funded by the Governments of Kenya and United Kingdom. The HSNP2 is reported to be a government led programme, under the Ministry of Devolution and Planning, managed by the National Drought Management Authority (NDMA). Its overall objective is to reduce extreme hunger and vulnerability by delivering regular and unconditional cash transfers of Kshs 5,400 every two months (starting from July 2016) to targeted households with economic challenge.<sup>32</sup>

All these are impressive efforts by the government to address poverty. However, given the reality that subsistence agriculture still forms a huge part of Kenya's economy (75%), the population that needs to improve incomes at family level to support the children is definitely huge, and the efforts being described here reaches a small section of the population. As such, there is need to critically review these efforts to determine, first, their sustainability and secondly the sectors of the population that should be targeted in order to enhance their effectiveness.



## 4.12 Structures Assigned to Address Child Labour and Violence Against Children

Given the nature of the issues being dealt with, there are many institutions expected to deal with these issues, which are indeed related to child protection. These institutions have been described on page 5 of this report. According to the findings of the review, all the government policies are mainstreamed into the Strategic Plans or programmes of government Ministries, Departments and Agencies (MDAs) as reflected on page 5. The government has a performance contract process with the MDAs to monitor and evaluate progress. The MDAs are expected to submit quarterly progress reports on quarterly basis.<sup>33</sup>

The government has gone further to create systems to provide some coordination to its efforts on child labour and violence against children. However, in the review of implementation, these systems cause challenges related to coordination of efforts. This becomes even more challenging when the government expects many stakeholders to join and support its efforts. The stakeholders often lead the process, since they provide resources to address child labour and violence against children in Kenya. This, to some extent, has weakened the Government institutions dealing with these vices as has been identified by US Departments of State and Labour on yearly basis, where these government agencies or institutions have been reported not to be doing much, just as many countries in sub-Saharan Africa who suffer the same fate.

The perennial challenges identified are failure of the government to allocate adequate resources, the capacity to deal with the issues, as well as, poor coordination of efforts. These observations have been made by most UN agencies, which work with the government, such as, UNICEF, UNESCO, ILO, UNDP, among others. Thus, there is a huge issue of leadership in addressing these vices in the country as the government is not effectively addressing the challenges that had been identified.

A large number of other institutions have been involved as reflected in the literature. These include; the Employers and Workers Unions, which are tripartite partners of the government. There have been international and national civil society organizations, as well as, Faith Based Organizations involved. However, the participation of these groups is highly sporadic and depends on the availability of resources.

All these are challenges that need to be effectively addressed in Kenya if the worst forms of child labour have to be eliminated and the widespread of violence against children is to be prevented and dealt with effectively.

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<sup>33</sup> <http://sustainable.development.un.org/memberships-tales/Kenya>

## 5.0 CONCLUSION

The purpose of this review was to undertake a comprehensive review of key Government Laws, Policies and Programmes dealing with child labour, including; its worst forms and violence against children, to determine the state of implementation, while identifying gaps that hinder effective implementation of the noble intentions. Further, the review sought to establish how resources are allocated, as well as, the role the government plays in implementation of these statutes and how Sustainable Development Goals are covered in the documents. The method used, included, the review of literature, mainly the existing laws and policies, as well as, reviewing available reports on their enforcement and implementation.

The findings of the review show that in terms of legislation and policy, the Government of Kenya is committed to the protection of children, as there are enough laws and policies to protect children in the country from worst forms of child labour and violence against children. The programmes to implement the policies and enforce the laws are also in place. The government has gone further and urged its Ministries, Departments and Agencies (MDAs) to mainstream SDGs in their Strategic Plans since 2016. This is seen in the many Acts, Policies and Programmes that have been formulated towards protecting children from child labour and violence against children. However, the review established that the enforcement and implementation of these policies, laws and programmes face major challenges. There are too many policies and programmes, where many stakeholders are expected to participate without working out modalities regarding roles and keeping track. The SDGs are being mainstreamed without proper coordination and clear assignment or statement on roles.

Resources allocation by the government is minimal, expecting external funding. This affects effective implementation of good intentions, as the field is left to the stakeholders with resources to direct implementation. It is apparent from the review that the monitoring and evaluation of these efforts are also left to external support of stakeholders, such as, UNICEF, ILO, UNDP, among others. This has led to processes which lead to the development of new policies and programmes that run parallel and not supporting each other. For example, from the review it was difficult to ascertain what happened to the government National Action Plan to Eliminate Child Labour (2004 – 2015). The implementation of this policy appeared to have faced challenges, leaving ILO and few stakeholders to implement few activities.

The social protection initiatives are minimal compared to the needs. Consequently, many children still drop out of school and end up in labour market under worst forms of child labour. Sexual abuse, as well as, exploitation are common without child protection efforts providing psychosocial support. This is much so, because Kenya has not ratified Convention 189 on Domestic Workers, yet domestic work is the second employment sector classified as a sector, where children are not supposed to work, because of the abuse and exploitation. With a devolved governance system of 47 Counties in Kenya, such services are highly needed. The Government has also not ratified the CRC Optional Protocol on the Sale of Children,

Child Prostitution and Child Pornography, which came into force in 2002 and some 173 States have become a party to the treaty.

Therefore, despite the many efforts the Government has made to enact laws and develop policies and programmes to eliminate child labour, especially its worst forms and to stop violence against children, many children are still subjected to the same vices in Kenya. This calls for significant change regarding some of the strategies currently being used.



Many of the working children are in the agricultural sector

## 6.0 IDENTIFIED GAPS AND RECOMMENDATIONS

### 6.1 Ratification of Convention

Although significant efforts have been made by the government to ratify international conventions and treaties that are related to child labour, especially the worst forms, as well as, violence against children, the government is yet to ratify the following important treaties:

- a) ILO Convention 189 on Domestic Workers.
- b) CRC Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography.

It is being recommended that the Government of Kenya should ratify and domesticate these important treaties.

### 6.2 Enforcement of the Laws

Currently, Kenya has 6 laws to protect children and to ensure that children enjoy their rights. However, the Basic Education Act of 2013 is not clear on the age the child should stay in school. It is important for this Act to be amended to clearly state the age a child should be in school and be provided with skills training before joining the labour market.

The Employment Act 2007 revised 2012, also needs to be reviewed to harmonize it with other laws. It currently contradicts Education Act and the Children's Act by allowing children as young as 13 years to be employed in what it terms light work. Most of the concepts being used as light work and industrial undertaking are too vague. Above all, the majority of children working in Kenya are into non-formal sector, which this Act does not include. It will be difficult to implement this Act, even at County level in Kenya. Children are reported to be working in the family farms or enterprises, where they work long hours and under harmful situations. This Act allows this to happen and affects the education of children in Kenya. As such, there is need to review both Acts and harmonize them.

The Counter Trafficking in Persons Act 2010 and the Sexual Offenses Act 2006 have been observed in the review as not being implemented effectively. The prosecution of the perpetrators in the Counter Trafficking in Persons Act is almost nil, yet many children are being trafficked outside and within Kenya to domestic work, CSEC and prostitution. On the other hand, the cultural practices and stigma associated with them, affect their enforcement. Besides, the cases also take too long in courts, which discourage the parents to report cases of sexual abuse. On the other hand children that are being trafficked in or outside Kenya are done with full knowledge of their relatives and guardians, making it difficult to intervene effectively.

The approaches being used in Kenya to deal with trafficking of children and sexual abuse and exploitation are not dealing with the root causes (push factors). The parents or guardians of these children are not effectively involved in the strategies.

Similarly, the education systems (school, teacher, parents and children) are hardly involved in the efforts to fight the vices. Therefore, strategies that include awareness raising and capacity building on how to enforce these important instruments are very much needed. Since many reports indicate that the enforcing agencies do not have access to information on the many instruments (laws and policies), there is need to ensure that the enforcing agencies are well equipped with these instruments.

Similarly, there is need to involve key stakeholders, such as, parents, and teachers, students themselves to address issues affecting children in terms of sexual abuse, exploitation and violence. Similarly the key stakeholders, especially the ministries of Finance, Planning and Agriculture, should be made aware of these important legislations that protect children in Kenya. If possible, simplify them and make them available in schools and other public institutions.

### **6.3 Implementation of Policies and Programmes**

The policies and programmes are just too many, most of which have not been effectively implemented e.g. the National Child Policy on Child Labour 2016, which has taken too long to be formulated and adopted, yet this key policy is for eliminating child labour in the country.

The review found that the Sustainable Development Goals are being mainstreamed into too many government Strategic Plans, which included Vision 2030's Third Medium Term Plan (2018 – 2022). This is being done through Government directing Ministries, Departments and Agencies (MDAs) to mainstream them into Policies, Planning, Budgeting, Monitoring and Evaluation systems and processes. The process makes it too difficult even to trace what is being mainstreamed.

However, the major challenge is allocation of resources and the number of stakeholders including Civil Society Organization involved, where their roles and responsibilities are not well defined. Therefore, there is great need to review these policies to determine similarities and identify priority areas that must be addressed within a given period. Allocation of resources by the government will only be possible if priorities and key actors are identified in specific areas. As of now the field is overwhelming with too many actors.

Issues of coordination need to be addressed and agreed upon as to who really should be responsible for issues, such as, child labour and violence against children. There is need to harmonize the policies and even the laws to make implementation effective. Most reviews have been done by external forces, which monitor what the government is doing to address child labour and human trafficking, including children. These are US Department of Labour and US State Department. These groups have been making good, but similar recommendations for many years and indication that the government is not responding. It is being recommended that the government monitors and evaluates its programmes. Above all, it is being recommended that the government should consider recommendations made by the stakeholders to improve the services related to child protection in Kenya.

## **6.4 Financial responsibility to enforce and implement laws and policies**

Though the Framework for the National Child Protection System 2011 singles out the Ministry of Finance as the one with the main responsibility of ensuring that the state allocates adequate financial resources to child protection, the National Action Plans reviewed, list the Ministry of Education, National Council for Children's Services, County governments, development partners, Civil Society Organizations, Faith Based Organizations, private sector as some of the key actors in the implementation and leaves out the Ministry of Finance. This leaves the government with minimal responsibility of financing the implementation of the activities as stated in the NPAs as well as to support the law enforcing agencies.

Although, most of the National Strategic Plans have been budgeted for, the government hardly allocates funding for these plans. Often, funding is expected to come from the government stakeholders, which are also implementers of some of the programmes. Yet the roles and responsibilities of stakeholders are not well defined. Above all, since the government has the primary responsibility of providing public services to the people, including children, there is need to undertake a budget analysis in order to establish budgeting allocations to children issues by various ministries charged with the responsibility to provide services to children.

## **6.5 Coordination of Child Protection Sector**

The network of child protective services in Kenya is currently challenged by the absence and or a weak coordination mechanism at all levels of government with clearly defined roles and responsibilities for all stakeholders. The National Council for Children's Services, which was established under the Children Act, is mandated with the role of exercising general supervision and control over planning, financing and coordination of child rights activities and to advise the government on all matters relating to children.

The Council is composed of representatives from relevant government ministries, non-governmental and faith-based organizations, and the private sector. However, it is worth noting that the NCCS is a department based in the Ministry of East African Community, Labour and Social Protection. Though the Department may advise the government on matters relating to children, it may lack the capacity to supervise, control, plan, finance and coordinate child rights activities due to limited resources.

## **6.6 Elimination of Child Labour through Education**

Despite having so many laws, policies and programmes to address child labour and violence against children, where children are supposed to be provided with free basic and compulsory education, a significant number of children are still out of school, according to the review and are working in agriculture and domestic service mainly. However, children are also trafficked into worst forms of child labour, such as sexual exploitation of children and prostitution. This is so, because, poverty is still an issue in Kenya and even education is supposed to be free, both

the Education and Employment Acts are not supporting this as the Employment Act allows school children of 13 years to work, while the Education Act allows school system to increase and charge fees, both practices that drive many children out of the school system. Besides the review also revealed that physical punishment and sexual abuse of children is still rampant in schools, the practices that drive some children out of school.

It is being recommended, therefore, that apart from harmonizing the two Acts, there is need to involve the education community, including schools, with advocacy with the aim of effectively protecting children from violence and leaving school into worst forms of child labour.

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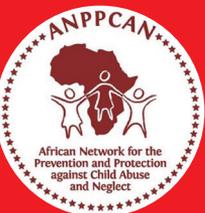
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