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MINISTRY OF GENDER, CHILDREN  
AND SOCIAL DEVELOPMENT

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**Sessional Paper No. 1 of 2011**  
**on**  
**National Children Policy**



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## SESSIONAL PAPER ON NATIONAL CHILDREN POLICY FOREWORD

The Kenya government has for long recognized the need to develop a comprehensive framework to deal with children issues as a matter of national concern. The process started in the year 2007 through various consultative forums and workshops with diverse stakeholders, including children.

This resulted in the final draft policy on children.

The policy defines a child as any person under the age of 18 years.

This policy was prepared on a background of various challenges affecting children in Kenya. The policy recognizes that children's rights are human rights and all steps need to be taken to advance and advocate for them, so that children in Kenya can realize their full potential. It therefore, addresses issues/challenges facing children and also provides a broad based framework for implementation of strategies that will enable children realize their rights and thus lays a strong and solid foundation for national development and prosperity.

The goal of the policy therefore, is to realize and safeguard the rights and welfare of children in Kenya. It emphasizes the fact that children are vulnerable, innocent and dependent. They make up more than half of the national population and therefore their rights should be respected and protected at all times. In a nutshell to secure Kenya's future all children must be protected from harm and violation of their rights.

The policy provides a comprehensive framework that will guide the different sectors and agencies involved in children issues in Kenya.



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## ACRONYMS

<b>AAC</b>	–	Area Advisory Council
<b>ACE</b>	–	Adult Continuing Education
<b>ACRCW</b>	–	African Charter on the Rights and Welfare of the Child
<b>AIDS</b>	–	Acquired Immune Deficiency Syndrome
<b>ARI</b>	–	Acute Respiratory Illness
<b>ASAL</b>	–	Arid and Semi Arid Lands
<b>CCK</b>	–	Communication Commission of Kenya
<b>CCIs</b>	–	Children’s Charitable Institutions
<b>CNSP</b>	–	Children in Need of Special Protection
<b>CSEC</b>	–	Commercial Sexual Exploitation of Children
<b>CSOs</b>	–	Civil Society Organizations
<b>DICECE</b>	–	District Centres for Early Childhood Education
<b>DCS</b>	–	Department of Children Services
<b>DVD</b>	–	Digital Versatile Disks
<b>ECDE</b>	–	Early Childhood Development Education
<b>EFA</b>	–	Education for All
<b>FGM</b>	–	Female Genital Mutilation
<b>FPE</b>	–	Free Primary Education
<b>GBVRC</b>	–	Gender Based Violence Recovery Centre
<b>HIV</b>	–	Human Immuno-deficiency Syndrome
<b>IDCs</b>	–	Internally Displaced Children
<b>ICT</b>	–	Information Communication Technology
<b>ITN</b>	–	Insecticide Treated Nets
<b>IGOs</b>	–	Income Generation Opportunities
<b>KDHS</b>	–	Kenya Demographic Health Survey
<b>KESSP</b>	–	Kenya Education Sector Support Programme
<b>KIHBS</b>	–	Kenya Integrated Household Budget Survey
<b>KNBS</b>	–	Kenya National Bureau of Statistics
<b>KNEC</b>	–	Kenya National Examination Council

<b>MDGs</b>	–	Millennium Development Goals
<b>MTEF</b>	–	Medium Term Expenditure Framework
<b>NACADAA</b>	–	National Agency for the Campaign Against Drug Abuse Authority
<b>NACC</b>	–	National Aids Control Council
<b>NACECE</b>	–	National Centre for Early Childhood Education
<b>NCCS</b>	–	National Council for Children’s Services
<b>NFS</b>	–	Non Formal Schools
<b>NCP</b>	–	National Children Policy
<b>NFE</b>	–	Non Formal Education
<b>NGOs</b>	–	Non – governmental Organizations
<b>NSSF</b>	–	National Social Security Fund
<b>NHSSP</b>	–	National Health Sector Strategic Plan
<b>NHIF</b>	–	National Hospital Insurance Fund
<b>ORT</b>	–	Oral Rehydration Therapy
<b>UNGASS</b>	–	United National General Assembly Special Session
<b>TSC</b>	–	Teachers Service Commission
<b>UNCRC</b>	–	United Nations Convention on the Rights of the Child
<b>WHO</b>	–	World Health Organization
<b>WFC</b>	–	World Fit for Children

## EXECUTIVE SUMMARY

Kenya has an estimated population of 39 million people. Approximately 19.15 million that is 50 per cent are children.

Of this population, 7.66 million that is 20 per cent are children under five years, while 1.92 million that is 5 percent are children under one year. Out of 19.15 million children, 46 per cent that is 8.81 million children live in absolute poverty, with figure rising in rural areas to 50 per cent.

Further analysis indicates that of the 19.15 million children, 15.32 million or 80 per cent live in rural areas, while the rest 3.83 million live in urban centres.

Although old age dependency is low in Kenya child dependency will still be considerably prohibitive because of the high fertility rates.

The population growth rate at current levels of 2.8 per cent per annum is considered to be high with an approximate doubling of 15 years. This implies that by the year 2030 Kenya's population will be about 65 million people.

The population in Kenya today is still characterized by high fertility rates, a younger structure, a youth 'bulge' high dependency burdens, and high population growth rate in spite of HIV/AIDS. All these constitute serious obstacles to poverty eradication and sustainable development, thus posing serious challenges to the well being of children and realization of their rights.

The demographic shift towards increased children and young persons in society has been accompanied by rapid urbanization, shifting attitudes within communities and population movements. In particular the increasing movement of younger persons from rural to urban areas in search of employment has led to major changes in family structures leading to breakdown of the extended family support systems. This combined with poverty, HIV/AIDS and moral decadence in society has threatened the protective environment for children as they become vulnerable to abuse, violence, exploitation, neglect, commercial sexual exploitation, trafficking, child labour, harmful traditional practices (such as female genital mutilation/cutting), child marriage among others. According to National Aids Control Council (NACC) there are approximately 2.4 million children who are orphans, whose rights to survival, development and participation are unfulfilled and /or threatened.

The need for a policy on children arises from the government's commitment to address the well being of this vulnerable category of society through a comprehensive and coherent institutional, legislative and enforceable framework. This policy is based on the 4 pillars of the United

Nations Convention on the Rights of the Child (UNCRC), the African Charter on the Rights and Welfare of the Child (ACRWC), the Children Act, 2001 and other related instruments on Children.

The areas that the policy seeks to address being:

- Facilitate enjoyment of quality life for all children
- Promote healthy and active life through comprehensive health care for all children
- Recognize and provide assistance to vulnerable children and their households to guarantee their social economic needs.
- Ensure that special needs of children are met in conflict and disaster situations.
- Ensure that children are protected from abuse, neglect and exploitation
- Ensure that children get quality, accessible, inclusive, equitable and affordable education to enhance holistic growth and development and participation in the development process at all levels.
- Strengthen Community programmes and structures in order to keep orphans and vulnerable children in family care and thereby optimize financial and human resources.
- Use Children's charitable institutions as the last resort and temporary measure for children as they await appropriate placement in alternative family care within the community.
- Put in place appropriate and effective legislative and institutional implementation framework in support of the National Children Policy.

Each chapter on the policy starts with a broad overview on the situation highlighting the challenges facing children in the country.

This is followed by action plans to achieve the objectives.

## CHAPTER 1

### INTRODUCTION

#### 1.1 Background

Kenya's long history of service to children goes back to the colonial period. The first institutional response was started around 1909 by establishing a corrective facility to take care of deviant youth who failed to register and carry with them the identity cards, then popularly referred to as "Kipande."

Over time more than twenty government institutions have been established in several parts of the country to cater for children in conflict with the law as well as those in need of care and protection, the latter being the majority.

About 130 District Children's Offices under the Department of Children's Services have been established so far to spearhead and co-ordinate community based interventions on diverse children issues.

The post independent years also witnessed the establishment of thousands of programmes and projects by Non-governmental Organizations, faith based organizations and the private sector to complement government's service to children.

The culmination of these initiatives resulted in government of Kenya ratifying the United Nations Convention on the Rights of the Child (UNCRC) in July, 1990 and developing and approving for implementation of the first comprehensive National Plan of Action for children 1990-2000 to realize the goals of the World Summit for children.

By participating in the summit Kenya shared in a process that established broad goals geared towards the well being of children and which each state was expected to fine tune into national objectives, that is on survival, development, protection and participation.

Kenya ratified the African Charter on the Rights and Welfare of the Child (ACRWC) in 2000. With the enactment of the Children Act in 2001, Kenya confirmed her commitment to translate agreed UNCRC and ACRWC principles into law. The enactment of the Children Act was a major follow-up action of the World Summit as it implemented the UNCRC and the ACRWC.

## 1.2 Situation Analysis in Kenya

Kenya serves as an economic, social, cultural and political hub within East African region. Yet this fairly young nation with an estimated population of 40 million people with about 19 million under 18 years, shares with her neighbours the obligation to achieve social, political and economic equity, growth and development that guarantees rights of every citizen.

Poverty and vulnerability continue to hamper realization of rights especially for children. The government of Kenya believes that investment in child rights is both an obligation and opportunity. It is an obligation because deprivation, poor nutrition, abuse, illiteracy and ill health undermine children's abilities to develop to their full potential. It is an opportunity because better nutrition, primary health care, education and protection for children are far greater and long lasting than any other development intervention.

Nationally, Kenya has been ranked very highly amongst 52 African countries for putting in place legal requirement that is protective or promotes the right of children and implemented a budgetary policy or programme that favours children. According to a report by African Child Policy forum (2008) the government of Kenya was ranked among the top ten most child friendly African governments, mainly for three reasons. First as a result of the government putting in place appropriate legal provisions to protect children against abuse and exploitation; secondly because of its commitment to allocating a relatively higher share of the national budget to provide for the basic needs of children; and thirdly as a result of the effort and success in achieving relatively favourable well being outcomes as reflected on children themselves. According to this report Kenya has performed well in other indicators relating to corporal punishment, policy for free primary education, existence of juvenile justice, National Plan of Action for survival, protection and development of children and a government body established to co-ordinate the national strategy for children.

Nonetheless how children fare in the Kenya society against the national and international human rights legal framework has not been documented comprehensively in recent times. In fact the last Kenya situation analysis of children was undertaken in 1998.

An analysis is a useful process for the stakeholders in children issues as it provides the opportunity to gauge the extent to which more than half of the population of Kenya composed of children and young people, have their rights realized.

It is for this reason that the government of Kenya through the National Council for Children's Services undertook an analysis of the situation of children in Kenya. The analysis started in 2008 and the report has been finalized. It was a very participatory process as it involved several partners, consultants, children and other stakeholders.

The analysis looked at the broad status of the economy and child poverty in Kenya and their implications on the rights of children; the policy, legislative framework and resources for the realization of the rights of children. Following these are the chapters on the right to survival, the right to education, the right to participation and the right to protection from violence, abuse, neglect and various forms of discrimination.

It also examined the current trends in child poverty over a period of 10 years (2000-2009). In economic terms this span of time was characterized by positive economic trends in Kenya, though recent growth experienced setbacks due to the global financial crisis. Kenya registered a high economic growth rate during the period 2005-2007 which reached as high as 7.1 per cent before plummeting to the lowest level registered of 1.7 per cent in 2007/08 fiscal year. Since then the economy has continued to recover but at a relatively slow pace (KNBS, Economic survey).

The slow revival of economic growth in the last two years kept Kenya among the world's 50 poorest countries according to human development index. This leaves a lasting impact on the well being of children through increased malnutrition, morbidity and mortality.

According to the World Fit for Children +5 progress report of 2006 an estimated 8 million children require special care and protection from a wide range of issues: abuse, violence, exploitation, neglect, trafficking, child labour, commercial sexual exploitation among others.

In addition to this, concerns about HIV/AIDS remain high and the rising number of orphans and vulnerable children confirms the ongoing impact of the disease and poverty on children.

Among all children in Kenya an estimated 30-50 per cent are believed to be living below the poverty line. By 2006 among children of school going ages of 6-17 years, about 6.2% had never attended school despite government's efforts to provide free primary education since 2003. In terms of nutrition during the crucial stages of 6-59 months nearly 21% are underweight, 35% stunted and 6% have signs of wasting (KIHBS 2006).

The Sitan report recommends that a vision 2030 for children be put in place as part of Medium Term Plan and service charters to the vision

2030; linked to the Medium Term Expenditure Framework(MTEF) to implement this National Children Policy, the National Plan of Action for children and the Children Act. This will help Kenya address the many obstacles standing in the way of realization of children rights in a comprehensive and consistent manner.

### **1.3 Challenges**

Children face many challenges all over the world and in particular developing countries in sub-saharan Africa. A large dependant population of children in society has created huge challenges about how to respond and meet their needs and concerns to ensure their growth, development and participation. The challenges that Kenya faces today is how to provide a safe and secure environment that safeguards the rights and special needs of children in order to nurture and grow their potential, and generally prepare them for adult responsibilities to contribute to the development of the country.

This calls for implementation of strategies that will address the diverse obstacles that have stood in the way of full realization of children rights and hindered their ability to realize their full potential. This will be addressed through broad-based, inclusive and participatory policy interventions, institutional framework, legal instruments and development initiatives.

### **1.4 Existing Policies And Programmes For Children**

Despite lack of a comprehensive policy on children, the government of Kenya in collaboration with Non-governmental organizations, private sector faith based organizations, community based groups and development partners has continued to offer support to children all over the country:-

#### **Civil Society Organizations**

The services include education, health care, food & nutrition, psychosocial support, shelter and advocacy.

Some of the organizations also provide targeted support to children in refugee camps and in disaster situations.

## **The Family**

The family is still the most important institution for the growth and development of children. The extended family support system to children is still operational in many communities despite the changing structures, living patterns, social values and economic pressures. The new Constitution states that "the family is the natural and fundamental unit of society and necessary basis of social order, and shall enjoy the recognition and protection of the state." This is critical because if the family functions well then the child's well being is assured.

### **1.5 Vision**

The vision for National Children Policy, is to create an environment where all the rights of children in Kenya will be fulfilled.

### **1.6 The Rationale For National Children Policy**

The need for a national policy on children arises from government's realization that without a coherent and comprehensive overall framework for guiding the different sectors and agencies involved in issues pertaining to children, substantial resources and efforts may continue to be duplicated and wasted.

In this regard, therefore, the well being of children will be addressed recognizing that:-

- Children are the most vulnerable members of the Kenya's society and should therefore, be given priority, their rights respected and their needs provided for through appropriate policy prescriptions, legislative instruments, enforcement mechanisms and developmental programmes.
- Adequate budgetary and other resources be availed to facilitate programmes targeted to children.
- Increasing number of children has significant implications on national development.
- It is imperative that government and policy makers take adequate steps to provide for children's well being and development.
- Children are the present and the future and therefore need to be nurtured to effectively participate in the national development process.
- Kenya as a United Nations member state and signatory of the World Summit Goals and African Common Position on Children and

Action Plan, World Fit for Children goals, subscribes to adding quality life to her children through this National Children Policy.

## **1.7 Guiding Principles**

The guiding principles underlying the formulation of the National Children Policy are derived from existing international, regional and National instruments and frameworks that support the realization of the rights and welfare of children. Key among these include:

- United Nations Convention on the Rights of Child (1989).
- African Charter on the Rights and Welfare of the Child I(2000).
- The Children Act, 2001.
- The Hague Convention on the Protection of Children and Co-operation in Respect of Inter-country adoption (May,1993).
- Refugee Act, 2006.
- Persons with Disability Act, 2003.
- Sexual Offences Act, 2006.

### **Participation in Society**

Children are entitled and have a duty to participate in the affairs of society in line with their evolving capacity.

### **Benefits from Community Support and Care**

Children are entitled to adequate care and assistance of family and the state. They are entitled to access all the relevant services to maintain optimum levels of physical, mental and emotional well being.

### **Best Interest**

In all situations the best interests of the child will be paramount.

### **Dignity, Security and Freedom from Exploitation**

Children are entitled to live in dignity and respect and free from all forms of exploitation, discrimination, abuse and neglect.

## **1.8 Policy Objectives**

In addressing the needs of children in Kenya the broad objective of the National Children Policy is to realize and safeguard the rights and welfare of children by providing a secure environment that will allow children to grow and thrive.

In this regard, the policy objectives are as follows:-

- Provide a framework for addressing issues related to children's rights and welfare in a wholistic and focused manner.
- Provide a regulatory framework to co-ordinate the many related policies and legislations that are geared towards promotion of children rights.
- Provide direction and purpose in establishing social and child protection mechanisms while mobilizing resources for action.
- Provide criterion for evaluating and monitoring the implementation of various legislations and policies and programmes targeting children.
- Put in place an implementation framework in support of this National Children Policy.

## CHAPTER 2

### **SURVIVAL RIGHTS**

The right to health is defined as the enjoyment of the highest attainable standard of physical and mental health conducive to living a life of dignity. Article 24 of the UNCRC clearly states that: “parties recognize the right of the child to the enjoyment of the highest attainable standard of health and to facilitate for treatment of illness and rehabilitation of health”. Health is a state of complete physical, mental and social well being and not just the absence of disease or infirmity World Health Organization (WHO). Provision for children’s health must take on board both the curative and preventive measures. This calls for provision of antenatal care, safe motherhood, immunization, balanced nutrition, access to health services, safe drinking water, sanitation and control and management of HIV/AIDs pandemic.

#### **Situation Analysis**

The overall goal of the health sector policy in Kenya is to “promote and improve the health of all Kenyans through the deliberate restructuring of the health sector to make all health services more effective, accessible and affordable.”

However, despite these noble intentions most health indicators show marginal improvements over the past decades. The country registered significant decline in infant and under 5 child mortality between early 1970s and early 1990s as a result of concerted immunization efforts against the six major childhood diseases: tuberculosis, measles, diphtheria, whooping cough, tetanus and polio as well as rapid introduction of low cost technology interventions to control diarrhea through oral rehydration therapy (ORT). However, this major gain in child survival started to slip since the 1990s.

The latest, Kenya Demographic Health Survey 2008-2009 (KDHS) indicates that noticeable reduction in infant and under five mortality figures have been recorded compared to the rates reported in the 1998 and 2003 Demographic and Health Surveys. The trends show that under five mortality rates has declined by 36 per cent from 115 deaths per 1,000 in 2003 KDHS to 74 per 1,000 in the 2008-2009 KDHS. Infant mortality has dropped by 32 per cent from 77 deaths per 1,000 in the 2003 survey to 52 deaths per 1000 in the 2008-09 Survey.

This notable decline in childhood mortality gives renewed hope that if Kenya maintains commitment to the key interventions and programmes

and focuses on areas where disparities are highest, she should be able to regain momentum to attain millennium development goal No. 4 targets of 64 and 32 per 1000 live births for under 5 and infant mortality rates respectively by 2015.

To ensure child survival will also call for consistent fight against malnutrition which triggers 50 per cent of all child hood deaths while acute respiratory illness (ARI), malaria and dehydration due to severe diarrhea are major direct causes of childhood deaths in Kenya. The main causes of diarrhea are poor hygiene practices which include lack of clean water for hand washing, drinking and poor faecal disposal.

Ongoing partnership to promote hand washing reveals the possibilities of managing diarrhea by changing attitudes in favour of positive child survival care practices as part of the community child survival strategy (Malezi Bora).

Clean and healthy environment and safe water supply is important to children for optimal cognitive, nutritional and healthy development, and this means they get access to these services not only in the home but in child care centres, institutions and the school environment as well.

Vitamin A deficiency is a significant determinant of child mortality as 40 percent of measles and 23 per cent of overall deaths can be reduced by vitamin A supplementation alone.

The prevalence of HIV/AIDS is also an important cause of maternal and child mortality in Kenya. Though Kenya is going through the death phase, there is sufficient evidence to suggest that there is decline in new infections.

The transmission of HIV to babies in Kenya continues to be a problem as most mothers are unaware of their HIV status. An estimated 184,052 children are living with HIV at 2009, out of which 117,000 are in need of treatment.

This calls for scale up of care, treatment and social support to counter the impact of HIV/ AIDS on children to guarantee life that is ideally in tandem with vision 2030.

Kenya is a signatory to the Abuja Declaration which commits countries to dedicate up to a minimum of 15 per cent of their budget to the health sector. The functioning of a health system will affect child health and determine mortality.

## 2.2 Legal and Policy Framework

In line with UNCRC, ACRWC and the Children Act (2001), all children have a right to accessible, affordable and quality health services. Effective health services should ensure dignity, promote self-reliance and facilitate active participation of children in the community. Article 24 of the UNCRC clearly states that: “*parties recognize the right of the child to the enjoyment of the highest attainable standard of health and to facilities for treatment of illness and rehabilitation of health*”. While it is important to ensure health services and conditions for maintaining optimum health are accessible to all children, the UNCRC specifically mentions the special needs of children with a disability.

Within Health Sector Reform, the government has adopted harmonization and alignment of health services and is promoting Sector Wide Approach (SWAP) for the social sectors. Annual Operational Plans are being developed and continue to involve a broad participation of different stakeholders. In addition the Second National Health Sector Strategic Plan (NHSSP II 2005-2010) called “Reversing the Trends” aims at reversing the high levels of under 5 and maternal mortality.

Treatment for malaria, HIV/AIDS, tuberculosis and leprosy are free. However, to increase access, the free service should include inpatient care at levels 5 and 6 facilities. The 10/20 policy has made it even cheaper for pregnant women to deliver under skilled care. Faith based health facilities also get anti-malarials, vaccines, antiretroviral drugs and family planning commodities free from the government. This increases access to these services all over the country.

Infant and Young Child Feeding Strategy is available and aims to improve nutritional status of under 5 and promote and protect breastfeeding. Further, adolescent and sexual reproductive health policy aims at improving quality of life of adolescents and youth. There is also the National School health Policy (2009) which guides the promotion of holistic health of school age children, while the Mental Health policy aims at directing mental health in the general population, schools and work places. Child Survival and Development Strategy (2008-2015) aims at contributing to reduction in health inequalities and reversing downward trends in health related indicators with a focus on child survival and development. It is also geared to advocating for increased political will and financial commitment for Child Survival and Development. There are however gaps in that there is need for a pro-poor National Social Health Insurance, Child Health Policy and Enactment of Breast Milk Substitutes

Bill to protect and promote breastfeeding, especially for HIV positive mothers.

### **Actions to Achieve Right to Survival**

Children are born, nurtured and grow in an environment that guarantees their survival. Accessible, affordable and quality health services for all children and mothers guarantees the realization of right to survival. "To achieve this, the following measures need to be put in place:

- Increased budgetary allocation to the health sector to reach the Abuja target of 15% of the national budget allocation with an emphasis on children survival needs.
- Advocate for a social health insurance which is pro poor to enable all children access quality services.
- Increase and motivate medical personnel in all cadres and create incentives for retention in hard to reach areas and marginalized areas such as the northern Arid and Semi-Arid Land (ASAL) regions.
- To reduce traveling distances for children and pregnant mothers to access maternal and child health services within a radius of 5 kilometers and below.
- Develop appropriate national strategies and guidelines (breastfeeding and complementary feeding, food guide, daily allowance tables etc.) to address the critical nutritional needs of children particularly among the most vulnerable groups through a holistic and inter-sectoral approach.
- Strengthen efforts in combating the spread of HIV/AIDS by effectively implementing the National Strategic Plan, policies and guidelines on HIV/AIDS, infant and child feeding programme and prevention of mother to child transmission of HIV.
- Integrate and implement adolescent health policies and programmes in the school curriculum with particular focus on the prevention of teenage pregnancies, unsafe abortions, and Sexually Transmitted Diseases including HIV.
- Strengthen developmental and mental health counseling services as well as reproductive counseling and make them known, accessible and appropriate to adolescents.
- Expand and improve health care and support to pregnant teenagers.

- Provide all under 5 and pregnant mothers with Insecticide Treated Nets (ITNs).
- Increase provision and stimulate demand for routine health services.
- Systematically include comprehensive information about HIV/AIDS and sex education to youth under 18 (in school and out of school) including counseling, testing, raising awareness on safe sex and provide training to health workers, teachers and education personnel on imparting knowledge on HIV/AIDS and sex education.
- Reduce maternal and child malnutrition levels especially for HIV/AIDS infected populations and the poor.
- Improve garbage and sanitation management while enhancing environmental conservation.
- Provide access to safe drinking water and sanitation facilities and ensure sustainability, availability, sufficiency and affordability to all especially children.
- Enhance domestic hygiene including household ventilation, cleanliness, and treatment for parasitic infections among children (e.g. jiggers, worms, lice etc.).
- Engage children in conflict resolution to enhance community survival during conflict and emergencies (including the settlement of Internally Displaced children).

## CHAPTER 3

### RIGHT TO DEVELOPMENT

Child development can be understood from various dimensions namely; physical, social, emotional, mental and moral. Physical development entails a child's physiological growth while social development focuses on child's ability to relate positively with other people at different stages of life. On the other hand, emotional development pertains to a child's inner feelings and reactions towards different situations. Mental development involves cognitive and psychological reactions while moral development involves issues of right and wrong and the resultant decisions.

Clause 53 (b) of the New Constitution states that every child has a right to free and compulsory basic education. The same rights are echoed in the Children Act, 2001.

#### **Situation Analysis**

In the holistic development of a child, the right to education is paramount. Children in Kenya deserve quality, accessible, inclusive, equitable and affordable education to enhance a child's holistic growth, social stability and participation in the development process at all levels. The government, through various policy instruments has recognized the right of the child to have basic education which encompasses primary and secondary levels. Equally crucial is Early Childhood Development Education (ECDE) known to be the foundation in a child's self actualization. However, it is recognized that in Kenya, due to diverse socio-economic factors, right to education is not enjoyed equally by all. A child's development also entails creativity and stimulation through play and recreation which are essential for the holistic growth of an individual. Within the right to development are also aspects related to parental and family care. These are important due to the role that proper upbringing and socialization plays in inculcating positive values in children. Equally important is a secure environment, quality standard of living and access to appropriate information.

#### ***(a) Education***

Recent policy initiatives in education have focused on the attainment of Education for All (EFA) and in particular Universal Primary Education (UPE). Emphasis in this sector have been on access, retention, equity, and performance, transition from one level to the other, quality and relevance. Equally important is the internal and external efficiencies within the education system.

However, HIV/AIDS, poverty and disasters (both natural and man-made) continue to pose a serious challenge to the entire education sector. Similarly, food insecurity, especially in ASAL, urban informal sectors and other pockets of poverty remain a major challenge.

(i) *Early Childhood Development and Education (ECDE)*

The overarching objective of Early Childhood Development Education in Kenya is to build a strong foundation for cognitive, socio-emotional and healthy development that maximizes on the child's learning potential. The gross enrolment in ECDE stood at 59.3% nationally as at 2007 although regional disparities exist. The situation is made more precarious by the fact that the government has not been actively involved in supporting ECDE programmes while the delegation of that responsibility to local authorities has encountered numerous challenges. The number of ECDE centers has increased over the years especially since the inception of FPE. Further, the Government through the Ministry of Education has established and equipped the National Centre for Early Childhood Education (NACECE) and District Centres for Early Childhood Education (DICECE) for purposes of in-servicing teachers and mobilizing communities and parents to take full advantage of the ECDE programmes. Despite the gains, the ECDE sub-sector is faced by a number of challenges including the low participation rates, high levels of poverty, high turnover of trained teachers as well as poor infrastructure and sanitation facilities.

(ii) *Special Needs Education*

Education opportunities for learners with special needs are a major challenge to the education sector. The challenges include lack of systems and facilities that respond to the needs of learners with special needs and disabilities. In addition, infrastructure in most schools is not friendly to children with disabilities and for those schools that have put in place some facilities, they are inadequate. While the Teachers Service Commission (TSC) does not recognize special education teachers who teach in regular secondary schools, they are inadequately trained and are not skilled to handle various categories of children with special needs. Another challenge is inadequate teachers in this area.

(iii) *Primary Education*

Since the introduction of FPE in 2003, the primary school enrolment has increased tremendously from an Net Enrolment Rate (NER) of 77.3% in 2002 to 91.6% in 2007 with near parity between boys and girls. The completion rates improved from 62.8% in 2002 to 81.0% over the same period. Transitional rates from primary to secondary on the other hand

increased from 43.6% in 2002 to 59.6% in 2007. The government aims at increasing this to over 80% by end of 2012. Challenges in this level of education include over-stretched facilities, high teacher-pupil ratio, regional and gender disparities.

*(iv) Secondary Education*

Secondary education has witnessed growth and expansion as the number of secondary schools increased from 3684 in 2002 to 6,400 in 2008. The Gross Enrolment Rate (GER) for secondary increased from 46.5 % in 2002 to 59.6% in 2007. Secondary school completion rates stood at 92.1% (boys 94.4% and girls 89.7%) in 2002 and 89.6% (boys 91.5% and girls 87.5%) in 2004.

Despite the measures put in place to address secondary education, the sector is faced by a number of challenges. These include inadequate schools, physical facilities, resources and the rising cases of indiscipline among the students.

*(v) Non Formal Education (NFE)*

Four broad categories of alternative educational provisions have emerged over time to cater for out of school children, youths and adults. These include, Non-Formal Schools (NFS) which follows the National Primary Educational Curriculum and enrolls school age children, Non-Formal Education Centres (NFEC) which includes all flexible and complementary provisions that offer basic education and skills training to children and youth, adult and Continuing Education (ACE) which offers continuing and training for out of school youth and adults; and non-Formal Schools that offers secondary education in a flexible manner.

Despite the poor conditions in which some of these institutions operate, they accord many learners opportunity to access education and are currently recognized as viable options for reaching out of school children, youth and adults. Some challenges that face NFE are lack of support by the government, weak management structures for those centers that are supported by the government and lack of qualified teachers.

*(b) Recreation, Leisure and Play*

The government has put measures in place in order to promote recreation, leisure and play as an important aspect of child development. Towards this end, the Ministry of Education has allocated a capitation for leisure related activities including ball games, athletics, and music, drama and school clubs. Further, in ECDE curriculum, child play is provided for as a method of learning. It is also a requirement that learning institutions have adequate

play grounds to enable pupils to actively participate in recreational activities. On the other hand, recreation and leisure facilities are generally lacking in many schools, while tight learning schedules continue to force children to go to school every day from Monday to Sunday. In addition, heavy workload leaves pupils with practically no time to play.

***(c) Parental and Family Care***

Parenting and family responsibility is critical throughout the development stages of a child. The family and especially parents are the most important foundation of a child's growth and social life. Through parenting and the family set up, children learn to socialize and live in an environment of love, care and support. The family is responsible for providing the child with basics of life including adequate diet, shelter, clothing, education, guidance and medical care. Socialization, a process of learning and internalizing social norms, values and attitudes, is initiated in the family set up through parenting. A child also receives education about their duties and responsibilities from the family and the community. Some of the challenges affecting parental and family care include low level of awareness on child rights and high levels of illiteracy among care givers.

***(d) Social Protection***

Social protection is a set of interventions aimed at reducing the risk of vulnerability to children living in poverty and other risky situations. A comprehensive social protection system should include protective, preventive, promotive and transformative strategies.

The government is developing a National Social Protection Policy (NSPP) in collaboration with the civil society to protect the poor and vulnerable households, and to promote investments in human and physical assets by poor households. However, high levels of poverty, recurrent drought and famine and the ever widening gap between the rich and poor continue to deny children basic necessities such as food, housing and shelter.

***(e) Access to Appropriate Information***

Children have a right to accurate and appropriate information to prepare them for various challenges in life. All duty bearers have an obligation to provide children with appropriate and relevant information for their growth and development. It is their responsibility to censure any harmful information on obscene and pornographic materials. Sources of information for children include electronic and print media, books, internet, journals and magazines. One of the challenges in this respect is that the contents are not child friendly. It is also difficult for the

government to censor all programmes since mechanisms for control are either lacking or uncoordinated.

### **Legal and Policy Framework**

The Early Childhood Development Framework (2005) provides guidance on the issues that need to be addressed in order to realize the wholistic development of the child (age 0-8 years). In addition, the Ministry of Education intends to integrate ECDE into primary education by 2010.

In the new constitution, county governments will be responsible for pre-primary education and child care facilities.

Further, education and training in Kenya is governed by the Education Act Cap 211 and other related Acts of Parliament including the TSC Act, the Kenya National Examinations Council (KNEC) Act, Adult Education Act, University Acts and Charters. The Children Act (2001) provides that every child shall be entitled to education, the provision of which shall be the responsibility of the government and parents while section 7(2), entitles every child to free basic education, which shall be compulsory in accordance with Article 28 of UNCRF.

Kenya's overall education goal is to achieve quality EFA and Millennium Development (MDG) 2 in line with the national and international commitments and *Kenya Vision 2030*. As a result, the government through FPE provides an annual capitation for each child to cater for instructional materials and recurrent expenditure. The Sessional Paper No. 1 of 2005 on Education, Training and Research spells out the long-term objective of the Government which is to provide every Kenyan with basic quality education and training including 2 years of pre-primary, 8 years of primary and 4 years of secondary/technical education.

The launch of the 5 year 2005-2010 Kenya Education Sector Support Programme (KESSP) in 2005 was a significant development. It identified 23 priority areas to be addressed in the next 10 years. In the KESSP education policy framework, the government aims at improving access and enhancing quality of services for children aged 4-5 years particularly those living in difficult circumstances such as ASAL, urban informal settlements and pockets of poverty, orphans, and other vulnerable children. FPE provides an annual capitation grant for each child to cater for instructional materials and recurrent expenditure.

In addition, a Gender and Education policy was developed in 2007 to provide a framework for planning and implementing gender responsive education, research and training at all levels. A Draft complementary non

formal education policy is under review to provide learning opportunities to out of school children and youth at basic and secondary education levels. A policy guideline on child mothers is in place. It gives guidance for girls who get pregnant in school to be re-admitted back to school. The Special Need Education Policy (2009) is now in place to ensure access of education to all children with special needs.

With regard to recreation, leisure and play, the children Act 2001 emphasizes on the responsibilities and duties of a child, recognizing that children have a role to play in preserving and strengthening social and national solidarity and support the development of positive cultural values of their communities. Section 17 of the Act provides for leisure, play and participation in cultural and artistic activities for the child and spells out the penalties for those who infringe on this right. The education Act requires schools to provide an enabling environment to ensure that children have time to play and participate in leisure activities. On the other hand, a draft cultural policy addresses the culture-based conflicts that affect the welfare of children. Such conflicts take the form of ethnic and religious differences, inheritance of property and succession. The draft policy also provides for and supports practices that do not violate the rights of children. However, the right to leisure, recreation and cultural activities cannot be enjoyed independently or in isolation.

On parental and family care, the Children Act (2001) guarantees the right of the child to live with her/his parents and not to be arbitrarily separated from them, except in instances where the interests of the child are violated. Children have a right to know and be cared for by their parents. The Act puts in place provisions that recognize parental responsibility in section 23 (2) (c) 1&114 (e). Further, the Act has a framework providing for registration of children's institutions, their supervision and co-ordination.

In Kenya, the Pension Act (Cap. 189), the National Social Security Fund (NSSF Cap 268), the National Health Insurance Fund (NHIF) and the National Social Hospital Health Insurance Fund Bill (NSHIF), provide the framework for social security in Kenya. There are also global commitment to universal social protection as a basic human right enshrined in the 1948 Universal Declaration of Human Rights and the UN Convention on the Rights of the Child (UNCRC). Various international agreements establish social protection as an entitlement and not a charity. Further, these agreements place clear obligations on state to guarantee social protection to its citizens particularly children.

As for the access to appropriate information, section 35 of the new Constitution provides right for every citizen to access information held by the state or held by any other person required for protection of fundamental freedom. The implementation of the Communication Commission of Kenya Act (1998) has resulted in the liberalization of the media providing opportunity for media companies outside the control of the state to enter the market. Section 15 of the Children Act (2001) provides that a child shall be protected from obscene materials. However, the government cannot censor TV programs from international sources delivered through satellite and cable service. The provincial administration, especially in rural areas, monitors the access of information to children especially in regard to video kiosks.

### **Planned Actions to Achieve Right to Development**

The acquisition of knowledge, skills, values and physical development is an important consideration in the realization of a child's right to development. The following are the action points to achieve this right:

- Integrate ECDE into FPE education by 2010 and provide a detailed information on its implementation framework.
- Ensure that all children complete 8 years of free and compulsory primary education and 4 years of secondary education free of costs by increasing public expenditure in education and also availing bursary funds to the most vulnerable.
- Increase enrolment in primary and secondary education by reducing social- economic, gender, ethnic and regional disparities in the access and full enjoyment of the right to education.
- Ensure access to education to vulnerable groups including pastoralists, street children, sentenced and released children, orphans, children with disabilities, child domestic workers, children living in conflict prone areas and refugee camps by introducing mobile schools, evening classes and eliminating indirect costs of school education.
- Strengthen vocational skill training for children who have left school before completion.
- Encourage the inclusion of children with disabilities into the regular education system.
- Ensure that all schools are child friendly.

- Strengthen the integration of survival and life skills education in the curriculum.
- Sensitize parents to participate in the provision of adequate infrastructure in the expansion of learning institutions.
- Finalize the development of a new education act.
- Ensure adequate playing fields and facilities in all schools and communities.
- Create awareness among parents/guardians, teachers and policy makers of the need to avail time for their children to play.
- Undertake regular education and sensitization sessions to parents on their obligations and children's rights including strengthening positive child up-bringing practices.
- Provide support and material assistance to the most vulnerable to guarantee adequate standard of living.
- Develop a comprehensive social protection framework with the highest priority given to the most vulnerable children.
- Ensure regular review of social security funds to enable contributors get a realistic return on retirement from which they can continue to support children under their care.
- Enhance development of skills for the vulnerable families to enable them to explore appropriate Income Generating Opportunities (IGOs) to enhance support to children under their care.
- Provide child friendly, educative and entertaining programmes in schools and communities.
- Set up additional libraries in rural areas and/or mobile library services.
- Transform the existing traditional social systems to provide appropriate and progressive information within the socialization process.
- Provide child friendly and appropriate Information Technology training and programmes.

## CHAPTER 4

### RIGHT TO PROTECTION

All children have a right to be protected from any harm that may interfere with their growth and development. The protection rights are realized through actions that ensure children grow in an environment where they easily access birth registration and identity as well as systematic measures to guard against physical and emotional abuse. Children should also be protected against drugs and substance abuse, child labour, child trafficking, sexual abuse, exploitation and neglect. They should also be protected against the negative impact of Information Communication Technology (ICT) and media, retrogressive cultural practices and harm by care givers. Again those in conflict with the law, abandoned internally displaced families, and refugees children require special protection.

#### 4.1 Situation Analysis

Among the most common factors necessitating children's need for protection include high poverty levels, the impact of HIV and AIDS, family disintegration and break down of community structures. At the same time, the moral decadence in society further exacerbates other forms of child endangerment. However, Kenya has an elaborate legal and policy frameworks to protect children from all forms of abuse and exploitation but enforcement and instances of delayed justice remains a major challenge.

##### *(a) Abuse and Neglect*

Child abuse entails various forms of mistreatment which culminate in direct violation of the rights of a child. Physical abuse is defined as any intentional use of physical force on a child resulting in harm to health, survival, development and dignity while child neglect refers to wilful abandonment of a child causing the child to be in need of care and protection. In Kenya, physical abuse of children is rampant and often done under the guise of corrective punishment. In some instances, it takes the form of hard work such as digging, herding of livestock and cutting wood and other household chores. Its perpetrators are almost always parents, teachers, guardians, siblings and other close relatives. Girls tend to suffer more from physical abuse as it also manifests as sexual abuse and exploitation. In many cases, physical abuse goes unreported as those abused regard it as a normal and justified way of disciplining.

On the other hand, child neglect is one of the most reported forms of child abuse in Kenya and affects children of all socio-economic status. Majority

of neglected children suffer from ill health and lack general necessities of life. Some end up on the streets in an attempt to fend for themselves.

**(b) Child Labour**

According to the Kenya National Bureau of Statistics 2007 (KNBS), about 780 .000 million children aged 5-17 years are in various forms of child labour. For example Children are involved in hawking, as vendors, domestic/house helps, herding, brick making, fishing, fishmongers, garbage collecting, hotel attendants, tobacco carrying, sand harvesting, commercial sex exploitation (CSEC) among others. Child labour may be defined as any economic exploitation and work that threatens the health and development of a child. In whatever form, child labour is exploitative, dangerous and harmful to the physical and mental development of children, deprives them of their potential, dignity and prevents them from attending school. It is a developmental challenge in that it negatively impacts on children, their families and communities, and threatens the country's development goals. Child labour thrives on a background of poverty, HIV/AIDS pandemic, poor living conditions, ethnic violence as well as intermittent droughts which continue to threaten the survival and development of many children.

**(c) Drug and Substance Abuse**

According to National Campaign against Drug Abuse Authority (NACADAA), drug and substance abuse among children and youth is on the increase in the country. This usually starts early hence interfering with normal maturation and resulting in addiction. Abuse is attributed to curiosity, peer pressure, social occasions and personal problems. Most commonly abused drugs and substances are *cannabis sativa* (Marijuana/bhang), heroin, *khat* (miraa), cocaine and inhalants. The toxic effects of drugs and substance abuse may cause long term and short term health problems and is also associated with risky social behaviour. However, no national survey targeting children specifically has been undertaken to determine the magnitude of the problem. There are few rehabilitation facilities run by both government and non-governmental agencies which are costly. Most organizations addressing the problem, including NACADAA are based in Nairobi and do not reach most communities outside the city. Other gaps noted include inadequate resource and skilled personnel to deal with drugs and substance abuse.

***(d) Child Trafficking and Commercial Sexual Exploitation of Children***

Child trafficking is the act of recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation regardless of the means, either within or outside a country. Exploitation includes exploitation for the prostitution of others, sexual exploitation, forced labour or services, slavery or practices similar to slavery or servitude, removal of organs, use of children associated with armed groups or forces, begging, illegal activities, sport and related activities, illicit adoption, early marriages (UN Palermo Protocol, 2000). Some of the acts may result in the deprivation of a parent, guardian or any other person who has lawful care or charge of a child the privilege to do so unhindered. Child trafficking still persists in Kenya and affects especially children living on the streets and those without parents or guardians. While there are no clear figures, there is anecdotal evidence that Kenya is fast growing as a source, transit and destination country for trafficking in persons including internal trafficking.

Child sexual exploitation includes any involvement of a child in sexual activity that he or she does not fully comprehend, is unable to give informed consent to or for which the child is not developmentally prepared or else that violates the laws or social taboos of a society (UNCRC Article 4). In many cases, subtle forms of sexual abuse go unreported including sexual harassment and vulgar comments about girls' body parts and language. The most prevalent form of sexual abuse for girls is verbal, indecent sexual touching, rape and defilement. Further, most children are abused by people known to them including fathers, close relatives and male teachers among others. Due to the privacy accorded to families, fear of victimization and instances of delayed justice, a lot of sexual abuse cases go unreported. Children with disabilities remain most vulnerable to sexual abuse. In some communities hide children with disabilities as it is considered a curse. It is estimated that between 10,000 - 15,000 girls between the ages of 12-18 are involved in sex work and sex tourism (WFFC, 2007). However, there is lack of accurate information on child trafficking and sexual abuse and exploitation due to under reporting and nature of this crime.

***(e) Negative Impact of ICT and Media***

Children access harmful information through ICT, internet and media, including music which has negative consequences on socialization and emotional development. With the proliferation and globalization of technology, the negative impact of ICT and Media on children is

increasing. Regular media especially through music both local and international promotes high rate of rebellion, violence, and irresponsible sex, poor academic performance among others. There continues to be difficulties in regulating private avenues of communication especially public broadcasting of pirated video types and DVDs and unfiltered internet material access and computer networks showing sexually explicit and/or violent materials.

*(f) Internally Displaced Children and Children of Refugees Families*

Internally Displaced Children (IDCs) refer to children who have been forced by a conflict or disagreement to move away from their permanent residence to settle in alternative places. The spate of violence in Kenya following the 2007 general election displaced approximately 600,000 people many of whom were children. As a result, many children now live in fear and trauma.

Children of refugees are those who have fled to a foreign country to seek protection from war, persecution or natural disasters. At the same time, refugees and asylum seekers in Kenya have increased over the years especially because of unrest and insecurity in neighbouring countries. One of the most tragic occurrences for any human being is to be displaced from one's regular home, land or shelter. Usually, such displacement is accompanied by high insecurity and violence. Most refugees stay in designated camps and face challenges of insecurity, lack access to basic needs and health care, restricted freedom of movement, expression and association.

*(g) Children and the Law*

Currently, the minimum age of criminal responsibility, set at eight (8) years, is too low. There is also a wide gap in quality of juvenile justice between urban and rural areas. There are also the phenomena of children in need of care and protection being confined together with child offenders and adults. At the same time, there is no systematized process for legal aid to children who may be in need of assistance such as orphans, street and destitute children among others.

In Kenya, ethnic conflict continues to erupt in various parts often sparked by the need to gain control of natural resources such as water and land or by politics. These in some cases lead to internal displacement and at times, children get directly involved in defending their groups. While such involvement is traumatizing, many children experience further trauma as they witness violence and often death of their relatives. Currently, there is no data on children involved and affected by conflicts.

***(h) Children under Community Care, Adoption, Foster Care, CCIs and Guardianship***

Parents have the first and primary responsibility for the upbringing of their children. However, due to orphan-hood, family disruptions and other social economic factors, there are children who have to be placed in alternative care services within the community. Alternative care for children takes the form of adoption (permanent placement of a child to a family), foster care (temporal placement of a child with a guardian), guardianship (non-parental care and charge of a child) and institutional care (an entity established to care for, protect or rehabilitate children). All children living under these arrangements should be protected against any possible abuse and exploitation.

In Kenya, adoption of children is slow, and generally people do not understand the process. In addition, all international adoptions are done in Nairobi and this may cause some delays. However, this was a deliberate arrangement to prevent corruption and abuse of the process. It is therefore, critical that awareness is created among the public on what alternative care entails in terms of adoption, foster care and guardianship.

***(i) Civil Registration of Children***

Every child has a right to have a name, nationality and registration. However, a large proportion of children especially in rural areas and urban informal settlements remain unregistered due to ignorance and attitude towards birth registration. There are some bottlenecks that assail parent wishing to register their children such as distance to the registration centres and the fee charged. However, there is need to conduct aggressive and consistent campaigns to create awareness on criteria for registration because registration is free for the first six months after birth. The new constitution provides that for children who are less than eight years old whose nationality and parents are not known, is presumed to be a citizen by birth. This will greatly assist abandoned children.

***(j) Retrogressive Cultural Practices***

Kenya has approximately 42 ethnic communities with a rich cultural heritage. However, some cultural practices and beliefs are retrogressive and harmful to the well being of the child. These include Female Genital Mutilation (FGM) and child marriages. These practices are rampant and deeply rooted among some indigenous groups and communities. FGM especially is difficult to eradicate due to the cultural honour accorded to women who have undergone it. However, it has been criminalized by the law but is still widely ignored. At the same time, other cultural regulation

such as rites of passage for boys and inheritance rights continue to place children in vulnerable situations. Further, FGM leads to early child marriage as the girl is assumed to have become an adult.

***(k) Prevention of Harm by Care-givers***

All children deserve quality care, nurture and protection against any dangers caused by those entrusted to them. A caregiver may be defined as any adult who is charged with the responsibility of taking care of a child or children. Care-givers may be parents, guardians, house-helpers, teachers, law enforcement agents and Children's Charitable Institutions (CCIs). There has been increased reporting of child abuse by care givers. Some of the abuses have involved defilement, and confinement, physical and psychological abuse and sometimes death. Children especially girls and those with disabilities have suffered more particularly in regard to defilement and confinement.

**4.2 Legal and Policy Framework**

The New Constitution offers children comprehensive protection from all forms of violence, abuse, neglect and hazardous or exploitative labour among other vices. This is also echoed in the United Nations Convention on the Rights of the Child (UNCRC), The African Charter on the Rights and Welfare of the Child (ACRWC) and the Children Act 2001.

As far as drug and substance abuse is concerned the Children Act, (2001) protects children from use of hallucinogens, narcotics and psychotropic drugs or from being involved in their production, trafficking or distribution and considers any child either abusing drugs or involved otherwise as a child in need of care and protection and not a child offender. Sale of glue to children is outlawed as well as sale of alcohol to children. There is the Narcotics and Psychotropic Substances Control Act which prohibits drug dealing and prescribes stiff sentences for drug traffickers.

Child trafficking is prohibited in section 174 (1) of the Penal Code. In the Code, the prescribed punishment for child trafficking is seven years imprisonment. Kenya has also acceded to the Palermo Protocol to prevent, suppress and punish trafficking of persons, especially women and children. The Children's Act 2001 protects children against sale, trafficking and abduction although the penalties are not severe enough. Also the Sexual Offences Act 2007 prohibits trafficking of children and women for sexual purposes though it is not comprehensive enough to include other forms of exploitation.

In addition to the establishment of Children Courts with gazetted children magistrates, as well as gender desks and child protection units, Children Act (2001) and Sexual Offences Act (2006) consolidates all existing laws on sexual offences and introduces new offences such as gang rape and sex tourism; and provision of legal aid and other child protection services for children that have been sexually abused. Other policy and legal frameworks include the Penal Code, Gender Based Violence Recovery Centre (GBVRC) at selected hospitals, Anti trafficking in Persons Bill, Child Protection Units at police stations and child labour policies.

With regard to child labour, Kenya has ratified and adopted International Labour Organization (ILO) Conventions 138 and 182. Further, Section 10 (i) of the Children Act emphasizes on the protection of children from any work that is hazardous or interferes with health, education or physical development, with stringent penalty for violation. In addition, the draft Sessional Paper on child labour, in Kenya (GOK, 2000) summarizes the government's commitment to the fulfillment of its obligations under various international instruments towards the elimination of child labour and addresses its various perspectives. The paper highlights the nature and magnitude of child labour problem, the vulnerability of child workers, determinants and consequences of child labour, and the need to mainstream concrete intervention measures to fight child labour.

Although there is no comprehensive legislation on exposing children to explicit content through media, some policy measures are in place to control this phenomenon. These include censorship of programs through parental advisory on mainstream media; information by the Communication Commission of Kenya (CCK) on protecting children from internet pornography and the ICT Bill (2007) which includes protection of children from pornographic materials.

The Refugee Act, 2006 stipulates provisions for the recognition, protection and treatment of refugees while spelling out the rights of such persons including their families, dependants, children and siblings under the age of 18. Section 23 of the Act guarantees protection of children in need of refugee status with the overall responsibility for tracing parents of such children and which falls squarely on the Commissioner of Refugees.

For children in conflict with the law, the Penal Code stipulates that a boy below the age of 12 is incapable of carnal knowledge and hence not criminally liable. However, Kenya is currently engaged in the piloting of a diversion programme for children in conflict with the law. The Children's Act, 2001 prohibits child participation in conflict situations including

participating in war. Further, Kenya is a signatory to the Optional Protocol on the involvement of Children in Armed Conflict. In addition, the Governance, Justice, Law and Order Sectors (GJLOS) reform program is an ongoing sector wide approach addressing key child protection issues related to justice and child rights. Further, Kenya has already put in place rules for the establishment of children's institutions though their implementation has not been adequately addressed. Kenya has also acceded to the 1993 Hague Convention on the Protection of Children and Cooperation in Respect of Inter-country Adoption. Kenya has also enacted the Children Adoption Regulations in 2005 which necessitated the forming of the National Adoption Committee to check and regulate adoption structures and procedures.

The right of every child to civil registration and nationality are well articulated in the Kenyan Constitution as well as Children Act 2001.

With regard to harmful cultural practices, Article 24 (3) of the UNCRC obligates State parties to ban traditional practices that promote discrimination or are detrimental to children's health. The Children Act, 2001 in Section 14 prohibits female circumcision. In addition, the FGM Eradication Strategy and Plan of Action provide a framework for the eradication of FGM in Kenya and highlights government's commitment in dealing with issues of FGM.

### **4.3 Planned Actions to Achieve Right to Protection**

For the realization of child protection, the following are the action points that need to be put in place:

- Enact laws to protect children from worst forms of child labour; corporal punishment in the home and in all public and private alternative care and employment setting; Female Genital Mutilation and/or Cutting, early child marriage, as well as Counter Trafficking in Persons Bill, taking into account international legal obligations.
- Ratify the Optional Protocol on the Sale of Children, Child Prostitution, & Child pornography as well as the 1993 Hague Convention on the protection of children and Cooperation in Respect of Inter-country Adoption.
- Raise the age of criminal responsibility to age 12 and ensure that all minors including those who have committed serious offences are treated under the rules of juvenile justice.
- Ensure that street children are not systematically treated as children in conflict with the law while guaranteeing that all children in

conflict with the law have access to free legal aid and effective complaint mechanism as well as ensuring that no children are sentenced to death penalty.

- Review existing discriminatory legislation on births registration, including legislation that prohibits the registration of children born to foreign fathers.
- Enforce laws on drug and substance abuse, child trafficking, sexual exploitation and physical abuse while implementing the Sexual Offences Act 2006, and Refugees Act 2006 in line with international human rights and refugee law.
- Establish the child protection systems.
- Popularize and widely disseminate the Sexual Offences Act.
- Ensure the compliance of the legislation regarding adoption with Article 21 of the UNCRC.
- Harmonize and enforce all statutes relating to child labour, children in conflict with the law, and CCI's regulations and Guidelines.
- Popularize the regulations and guidelines on alternative care as well as putting in place an effective monitoring system for all children in alternative care.
- Develop and implement appropriate policies on Disaster Preparedness, IDPs settlement, alternative measures to child deprivation of liberty such as diversion, probation, counseling and community services as well as for the prevention, recovery and reintegration of child victims, in accordance with the Declaration and Agenda for Action and the Global Commitment on adoption at the 1996 and 2001 World Congress Against Commercial Sexual Exploitation of Children.
- Revise the policy on long-term encampment on refugees and provide new regulations to allow greater opportunities for refugees to reside outside designated areas particularly to pursue medical treatment, education, to engage in self employment, to reunite with other family members and secure adequate physical and legal protection.
- Amend Section 38 of the Sexual Offences Act, 2007 which makes it a crime for a person to give false information on a sexual offence.

- Amend the Children Act to emphasize alternative family based care as opposed to institutional care.
- Conduct public education and create awareness on child rights to birth registration and identity; need for protection against harmful cultural practices; drug abuse; sexual violence, trafficking and smuggling; all forms of violence and promotion of alternative, participatory, non-violent forms of disciplining.
- Create awareness on exploitative and worst forms of child labour through child labour committees, Area Advisory Councils and other partners countrywide.
- Popularize alternative care such as fostering, guardianship and local adoption.
- Strengthen the capacity by systematic training of the children's parents /guardians, community, officers, volunteers, law enforcement agencies, other professionals working with children including teachers, social workers, judges, magistrates, health personnel and other stakeholders to investigate, review, monitor and respond appropriately to child rights.
- Collect regular, comprehensive and disaggregated data on all areas affecting children including such as child labour, children abusing drugs, trafficked and smuggled children, children in conflict with the law, IDCs, refugees and asylum seeking children, sexually abused, exploited and other relevant issues.
- Put in place mechanisms to document alternative care systems for children as well as ethical standards for practitioners in the children's sector.
- Put in place stiff penalties for those exposing children to pornographic materials and ensure the fair distribution of rehabilitation facilities; at least one in each province.
- Provide child friendly IEC materials on diverse issues related to child abuse and exploitation.
- Allocate a separate budget line for National Council for Children's Services (NCCS) to meet its obligations and increase funding to NACADAA and Area Advisory Councils (AACs) to enhance effective execution of their mandate.

- Provide adequate resources to the Refugee Department to enable it gradually assume a greater role in the protection and assistance of children with refugee status.
- Provide mobile birth registration units to reach remote areas countrywide.
- Put in place temporary rescue centres and places of safety for affected children.
- Ensure a drug free school environment and its surroundings and that the affected children are provided with psycho-social and legal support.
- Ensure that both sentenced and released children are provided with education opportunities such as vocational and life skills training, recovery and social reintegration services.
- Ensure that property inheritance rights for orphaned children (even within cultural settings) are upheld and protected.
- Set a minimum package for service delivery to children in CCIs and ensure continuous quality monitoring of services.
- Ensure effective reporting procedure and prosecution for all cases of torture and ill treatment of children.
- Expand cash transfer to families with orphans and vulnerable children in every district, location and sub-location while empowering communities to diversify poverty alleviation programmes.
- Proper and strict regulation of ICT material, television and radio programming to ensure children are not exposed to harmful content.
- Decentralize birth, identity cards, and passport registration centres countrywide and provide mobile units to reach remote areas.
- Create linkages between relevant civil registration service delivery structures to increase efficiency.
- Advocate for safe male circumcision.
- State to support and protect child-headed households.
- Install & operationalize 24-hour toll-free child help lines in all districts for immediate response to children distress calls.

## CHAPTER 5

### RIGHTS TO PARTICIPATION

These are rights that ensure children's views and ideas are considered in all matters that affect them in society. As stipulated in the UNCRC and the ACRWC, they include right to form and air views (Article 12); right to expression (Article 13); right to thought, conscience and religion (Article 14); right to association (Article 14); and right to participate in cultural and artistic activities (Article 31). Child participation is essential and children views need to be sought at all levels including home, community, school, national and international forums. UNCRC recognizes the importance of child participation through association, expression of opinion and contribution to the issues that affect their life. In addition, participation also entails active involvement of children in decision making in society and communities where they live ensuring that children respect the rights and views of others.

Child participation is a process that provides an opportunity for children to be involved in activities and decision making on matters that affect their lives but also defines their responsibilities to society, community and families. This is actualized by enabling children to express their views in accordance with their evolving capacities. The ACRWC recognizes the unique role the African child plays in the cohesion of the family, recognizing the disadvantages occasioned by poverty and the impact of HIV/AIDS. According to ACRWC, the child should participate in family work and chores that do not harm them and undertake activities that do not affect their right to survival and development. Child participation contributes to the development of lifelong skills and respect for culture, superiors and parents by children and ensures that children become responsible citizens as they mature.

#### **Situation Analysis**

The Kenya government is a signatory to international, regional and national instruments that espouse child participation rights and which recognize the importance of participation to inform in issues and activities that affect them. In collaboration with the Civil Society Organizations (CSOs), the government encouraged active involvement and participation of children in the preparation of Kenya country reports on implementation of the UNCRC, the United Nations General Assembly Special Session (UNGASS) process and the WFFC Goals +5 and other children-specific processes. Kenya government has also developed the National Child

Participation Guidelines to give guidance on engaging with children by all agencies and stakeholders in the country.

In Kenya, Civil Society Organizations have been instrumental in establishing child rights clubs in schools, and communities as well as clubs such as wildlife, environment, debating, health, road safety and chill clubs that support and promote varied levels of child participation. Civil Society Organizations also run youth-to-youth and child-to-child programmes and activities.

In addition, there are various events such as the annual children's and family day celebrations, the Day of the African Child, Day of the Family, World Orphan's day and Children Voices conferences, where children from all over the country meet and exchange information on crucial issues that affect their lives. There is a forum on *The Other Side of the Street*, through which children living in the streets and needy children's talent are showcased. The media runs various participatory children programmes such as *Club Kiboko*.

The Ministry of Education, Science and Technology has developed a Teachers' Handbook on child rights for primary teacher training colleges. The aim of the manual is to equip teachers as professionals and caregivers working with children on how to facilitate child participation. In addition, magistrates, teachers, judges, social workers, children officers, police, and probation officers are required to receive training on children participation supported by CSOs and the Children's Department.

### **Legal and Policy Framework**

Participation rights are provided for under the various sections and articles in UNCRC, ACRWC and Children Act 2001 as follows:

In the UNCRC:

- Article 12 – Respect for the views of the child.
- Article 13 – Child's Rights to freedom of expression.
- Article 14 – Child's right to freedom of thought, conscience and religion.
- Article 15 – Child's right to freedom of association and peaceful assembly.
- Article 17 – Access to appropriate information.
- Article 21(a) – The Right to informed consent of the person concerned.

In the ACRWC- Article 31- Responsibilities of the child in the African context are articulated.

Within the Children Act 2001 (Section 21), duties and responsibilities of the child are spelt out. Further, the Act states that in any matter of procedure affecting a child, the child shall be accorded an opportunity to express his or her opinion, and that opinion shall be taken into account as may be appropriate considering the child's age and the degree of maturity (Section 4(4)).

### **Planned Actions to Achieve Right to Participation**

All children shall participate in all areas relevant to their agenda and age. There is therefore need to:

- Facilitate and ensure children participation within the family, schools, community, AACs, juvenile justice procedures and in programs and projects of all partners and stakeholders while upholding the principle of respect for the views of children and their participation in all matters affecting them in accordance with Article 12 of the convention and recognize their responsibility in line with ACRWC recommendations.
- Disseminate widely the National Children Participation Guidelines and develop strategies to reach categories of children such as those heading households, Children in Need of Special Protection (CNSP), children with disabilities and involve them in public debate particularly at local level.
- Support and ensure active participation of children in national and special days such as the Day of the African Child, International Day of the family, World Orphans Day, Universal Children's Week and mobilize resource to ensure sustained funding support for participation and document the impact of these celebrations.
- Support children's involvement in policy planning, budgeting and in all sectors that affect them such as roads, housing and infrastructure planning.
- Establish national and regional children's parliaments that provide forum for children to air their views on diverse issues while inculcating a sense of responsibility and respect for the views of others. The views of the children parliament in the districts should be incorporated in the AACs meetings.

## CHAPTER 6

### IMPLEMENTATION, MONITORING AND EVALUATION FRAMEWORK

#### Introduction

The primary responsibility for implementation of the National Children Policy and ensuring that rights of children are realized rests on the Government (line ministries). The implementation, monitoring and evaluation framework will be coordinated by the National Council for Children's Services (NCCS).

Established under Section 30 of the Children Act 2001, NCCS is mandated to exercise general supervision and control over the planning, financing and coordination of children rights and welfare. The NCCS, which is a body corporate works with partner stakeholders both international and local through the Area Advisory Councils (AACs) established at district, divisional and local levels. The Department of Children Service (DCS) is the secretary and operational arm of the NCCS.

#### *(a) Capacity*

The Council is made up of 21 members as follows, eight (8) from line ministries, three (3) from Faith Based Organizations, six (6) from the civil society and two (2) from the private sector. The president appoints the Chairperson while the Minister in charge of children appoints the Council members. The Director for Children's Services is the Secretary to the Council and facilitates the setting up of the Secretariat.

#### *(b) Management of the NCP*

Overall guidance of the implementation of National Children Policy will rest on the Ministry responsible for Children Services while, NCCS will focus on the following:

- Mobilize adequate human and financial resources for the implementation of NCP.
- Strengthen partnerships with CSOs and NGOs to achieves the expected outcomes and outputs.
- Develop Vision 2030 for children.
- Negotiate debt relief in favour of resources for children.
- Seek full autonomy and strengthen its work through AACs mechanisms.

- Translate National Children Policy blue print into not only child friendly versions but also in languages understood by duty bearers and right claimers at the grass-root level.
- Advocate for the establishment of office of Ombudsman for Children to deal with complains by or on behalf of the children.
- Ensure that the media prepares programmes on children and on-going interventions on child related issues.
- Ensure that publicity materials are prepared by all implementing ministries and departments and disseminated to all stakeholders including children.
- Implement social budgeting initiatives to ensure adequate resources from partners, central government and devolved funds while guaranteeing that they are also spent on the marginalized, vulnerable and disadvantaged groups especially the Children with Disabilities (CWDs).
- Strengthen co-ordination, corporation and collaboration with CSOs in the implementation of National Children Policy.
- Coordinate with all stakeholders in planning and budgeting to leverage resources for the Policy implementation.
- Strengthen systems of data collection, management for purposes of generating disaggregated data to assess progress of implementation of National Children Policy.
- Ensure constant documentation and update in regard to resources for children for non-governmental actors.
- Engage all Non-governmental actors and other leaders including parliamentarians in promotion of children rights.
- Conduct regular national surveys for input in the review of National Children Policy.

### **Children First Fund**

To ensure regular flow of funds to implement the NCP, a “Children First Fund” will be established. The Fund will be managed by an independent professional management body under the oversight of NCCS. The Fund will be invested in the money market and the returns generated from the principle will be used to finance initiatives to advance the rights of children in Kenya but not to individual children. The capital base funds will be mobilized from various sources including GoK annual budget,

development partners, bequests and planned giving, rotaries, Civil Society finances and assets, donations among others.

Details of the operational modalities of the fund will be worked out by a professional advisory group.

### **Institutional Arrangement for the Implementation of National Children Policy**

The implementation of the NCP will involve multi-agency and multi-disciplinary approach by various stakeholders as explained here below:-

- Service delivery to the children will be done by every duty bearer as articulated in their mandates.
- NCCS will co-ordinate the implementation, monitoring and evaluation of children related interventions at all levels.
- NCCS will provide space for children and other stakeholders' participation in the planning, implementation, monitoring and evaluation of NCP.
- AACS will be the mechanisms for providing feedback on the effectiveness of interventions through regular periodic reports.
- The Ministry of Gender, Children and Social Development will establish a network of Non-governmental actors to ensure information sharing of good practices on the implementation of the NCP.

### **Monitoring and Evaluation of NCP**

To monitor and evaluate the implementation of the NCP, NCCS will ensure that:

- A suitable monitoring mechanism is established at the national, district and community levels to assess progress towards achieving expected NCP's outputs and targets.
- A comprehensive system is set up to collect and analyzes disaggregated data by region, district, gender, age, culture, social-economic grouping, special needs and circumstances.
- An inter-agency standing committee or task force to monitor the implementation of the NCP is put in place.
- Efforts are made to strengthen collection and analysis of administrative data on child focused measurable indicators to track the achievement of expected outcomes, outputs and targets.

- Capacity building for data collection and generation by different stakeholders is enhanced.
- A monitoring and evaluation link between NCP, Vision 2030, MTP, Strategic Plans and District Plans are established.
- Periodic reviews are conducted at National, District and programme levels to address constraints hampering the implementation of the NCP.
- Monitoring and Reporting on status of the NCP implementation is done by all stakeholders.
- Steps are taken to guarantee budgeting for children programmes in annual national budget.

### **Key Factors in Policy Implementation**

#### **Awareness Creation and Advocacy**

For effective implementation of this policy, there will be the need to create awareness by undertaking advocacy through:-

- Deliberate targeting of information to and about children.
- Sensitize policy/decision makers and stakeholders.
- Create alliances with stakeholders championing the interests of children at the local, national regional and global levels.
- Disseminate research and information relating to the situation of children.
- Undertake capacity building initiatives to enable the effective implementation of the policy.

### **ROLE OF OTHER STAKEHOLDERS**

The effective implementation of this policy will require contributions from stakeholders such as the private sector, development partners, Civil Society Organizations; faith based organizations, Research institutions and institutions of higher learning as well as children and child led organizations.

#### **Private Sector**

The Private Sector will be expected to deploy financial and material resources including technical expertise in support of children by government through tax legislation, review or voluntary contribution to the children fund.

### **Research Institutions and Institutions of Higher learning**

These institutions will be engaged to develop tailor made courses and curriculum at certificate, diploma and degree level under the Social Sciences with specialization on Child Rights. They will also be engaged in research on diverse children issues.

### **Civil Society, Faith based, Non-governmental, philanthropic and community based groups**

These organizations and groups will be expected to provide the critical localized and targeted support to children as identified by the Area Advisory Councils, Children Officers and other authorized persons.

### **Development Partners**

The government shall strengthen collaboration and establish networks with local and international development partners to complement and support its efforts in financing and implementing the National Children Policy. Partners shall include local and international NGOs, and agencies, donor agencies, Civil Society Organizations and faith based groups.

### **The Role of Children and the Community**

Community structures and organizations need to be strengthened to mobilize local resources, expertise and experience in support of children, within the local environment. Children will work for the cohesion of the family, preserve and strengthen positive cultural values in the community.

### **Policy Review**

The National Children Policy shall be due for review every 5 years. The policy shall also be considered for change when societal needs and demands concerning the rights and welfare of children occur.



