

**Kenya Civil Society Organizations (CSOs),  
Complementary Report, 2014**

**Presented to the  
African Committee of Experts on the Rights and  
Welfare of the Child**

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## **Abbreviations and acronyms**

ASAL	-	Arid and Semi Arid Lands
CCIs	-	Charitable Children's Institutions
CoK	-	Constitution of Kenya
CPU	-	Child Protection Units
DPP	-	Directorate of Public Prosecutor
EAC	-	East African Community
FPE	-	Free Primary Education
IDPs	-	Internally Displaced Persons
NCCS	-	National Council for Children Services
NHIF	-	National Hospital Insurance Fund
NPA	-	National Plan of Action
NPHR	-	National Policy on Human Rights
OVC	-	Orphans and Vulnerable Children
PWD	-	Persons with Disabilities
SNE	-	Special Needs Education
UPR	-	Universal Peer Review

## **Executive summary**

Kenya became a State party to the African Charter on the Rights and Welfare of the Child on 25/07/2000. This is the first Civil Society Organizations Complimentary Report to the Committee of Experts. The provisions in the Children Charter to which Kenya is a State party, aim at promoting and protecting the rights and welfare of the child in Africa; however, the fulfilment of these obligations is only possible with the good will from the States to implement the Charter. This report highlights Kenya's progress on implementation and compliance with the Children Charter.

The lack of implementation of child rights provisions as provided for in the African Charter on the Rights and Welfare of the Child; the United Nations Convention on the Rights of the Child; the Constitution of Kenya, 2010; and the Children Act, 2001 are occasioned by lack of social accountability and decision making at all levels across the country. Any State that ignores its children is bound to fail as children are not only the future leaders, but also part of the future generation upon which a State expects to realize its goals.

This Report sets out in detail human rights concerns arising under the Children Charter in Kenya. It has been prepared to assist the Committee of Experts in its engagement with the State. It is hoped that the specific details reported herein will assist the Commission in pressing the State to act effectively to address human rights issues of concern.

All of the submitting organizations have direct research and practitioner experience in matters related to child rights situation in Kenya. The process also included an element of child participation through the Children's Conference<sup>1</sup> that was held on 22<sup>nd</sup> March, 2014. This Report covers a number of recommendations addressed to the Committee of Experts based on the provisions of the Children Charter, including, the following;

- Chapter 1 – General Measures of Implementation
- Chapter 2 – Definition of a Child
- Chapter 3 – General Principles of Implementation
- Chapter 4 – Civil Rights and Freedoms
- Chapter 5 – Family Environment and Alternative Care
- Chapter 6 – Basic Health and Welfare
- Chapter 7 – Education Leisure and Cultural Activities
- Chapter 8 – Special Protection Measures

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<sup>1</sup> Annexure 1: The report from the Children's Conference held on 22nd March, 2014

## Acknowledgements

The preparation of this report was spearheaded by the East African Centre for Human Rights (EACHRights) ([www.eachrights.or.ke](http://www.eachrights.or.ke)) with the technical and financial support from Save the Children, East Africa Regional Office.

EACHRights would like to acknowledge the work and immense contribution by all the organizations that were involved in providing information for this report and more so for doing so within a very limited time frame. Special mention goes to the Kenya Alliance for the Advancement of Children (KAACR) for convening children to take part in the Children's Conference. Indeed, it was only through the commitment of the staff from all the organizations that were involved that the development of this report was made possible. Annexure 2<sup>2</sup> is the list of all the organizations that were involved in the preparation of this report.

Finally, the contribution by of Mr. John Njoka<sup>3</sup>, Ms. Enricah A. Dulo<sup>4</sup>, Ms. Phoene Mesa<sup>5</sup> Oware and Mr. Gilbert O. Onyango<sup>6</sup> in providing leadership for the process and conducting the background the research, drafting and compilation of the report cannot go without mention.

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<sup>2</sup> Annexure 2: Membership to the ACRWC CSO Complementary report group

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## **Chapter 1: General measures of implementation**

### **Article 1-Obligation of State parties**

#### **1. Legislative and policy framework enabling implementation of children rights in Kenya**

The Children Act, 2001 has been under review since 2010 and this process has not been completed. There is need for Parliament to legislate and implement the Children Act (Amendment) Bill.

The Marriage Bill, 2012 has recently passed through the 2<sup>nd</sup> reading<sup>7</sup> and is now before the President awaiting his signature to become law. Some of the provisions in this Bill that offer protection to children are: it sets the minimum age of marriage to 18 years<sup>8</sup>; it prohibits having a child act as a witness to a marriage<sup>9</sup>; it prohibits the marriage with one's own child or grandchild<sup>10</sup> among other provisions.

There's a draft Child Justice Bill, 2012 that seeks to raise the age of criminal responsibility from 8 years to 12 years. Whereas the Children Department is of the opinion that this Bill should be merged with the Children Act (Amendment) Bill, as stated above, the Department of Probation and After Care (which deals with children in conflict with the law) is of the view that the draft Child Justice Bill should not be merged with the Children Act, 2001.

The Counter Trafficking in Persons Act was made into law in August 2010. However, it only got a commencement date in October 2012 after a child rights organization sued the State over the legislation lacking a commencement date. The Act establishes an Advisory Committee<sup>11</sup> which is yet to be gazetted. There is need for regulation and guidelines for implementation of the Act.

The State no longer has a substantive Ministry that deals specifically with children matters. The Children Department has been placed under the Ministry of Labour, Social Security and Services. Children issues should be placed under a more prominent Ministry.

Whereas the Basic Education Act, No. 14 of 2012 seeks to promote and regulate free and compulsory basic education; provide for accreditation, registration, governance and management of institutions of basic education, all aspects that are welcome and well-intentioned, there is need for wholesome implementation of the provisions of the Basic Education Act especially the management of basic education institutions. There should also be special provisions for children with disabilities under the promotion of special needs education clause.

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<sup>7</sup> 26<sup>th</sup> February 2014

<sup>8</sup> Paragraph 4 of the Marriage Bill

<sup>9</sup> Paragraph 5 of the Marriage Bill

<sup>10</sup> Paragraph 10(1) of the Marriage Bill

<sup>11</sup> The functions of the Advisory Committee shall be to advise the Minister on inter-agency activities aimed at combating trafficking and the implementation of preventive, protective and rehabilitative programmes for trafficked persons

The Alcoholic Drinks Control Act, 2010 protects children with regard to sale<sup>12</sup> and consumption of alcohol. The Act additionally prohibits parents and guardians from taking children to premises where alcohol is on sale.

The Prohibition of Female Genital Mutilation Act, 2011 outlaws the practice of female genital mutilation. Monitoring of the implementation of this Act is still poor. Indeed, in communities where the practice has not been eradicated, there are reported cases where local Chiefs, who are State agents, are colluding with parents to have girls circumcised. There is established a board known as the Anti-Female Genital Mutilation Board.<sup>13</sup> President Uhuru Kenyatta in January 2014 appointed Hon. Dr. Lina Jebii Kilimo to head the board. Some of the functions of the Board are to design, supervise and co-ordinate public awareness programmes against the practice of female genital mutilation; and to generally advise the Government on matters relating to female genital mutilation and the implementation of this Act.<sup>14</sup>

## **2. Analysis of State policies**

### **(i) National Plan of Action for Children**

The State, through the coordination of the National Council for Children Services (NCCS), and partners developed a National Plan of Action for children (2008-2012) which determined priorities and interventions to address the gaps that may exist whose implementation are necessary for the progressive realization of the rights of the child in Kenya. The NPA 2008-2012 has now expired and the NCCS, is reported to have started the process of reviewing the mentioned NPA so as to develop another one to run for the next five years. The NCCS has in place a NPA Against Sexual Exploitation of Children in Kenya 2013-2017.<sup>15</sup> However, it is not clear if the process of developing the NPA 2013-2017 was ever completed.<sup>16</sup>

### ***Recommendation***

There is there's need to expedite the finalization of NPA and stakeholders should be involved in the process.

### **(ii) National Policy on Human Rights, 2012**

The development of a National Policy on Human Rights (NPHR) was premised on the need to provide a framework for the integration and mainstreaming of human rights in development planning, implementation and evaluation in all sectors in order to fully implement the Constitution of Kenya, 2010.<sup>17</sup> The policy was developed with the following objectives:

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<sup>12</sup> Section 28 of the Alcoholic Drinks Act, 2010

<sup>13</sup> Section 3 of the Prohibition of the Female Genital Mutilation Act, 2011 (Revised 2012)

<sup>14</sup> Section 5, Prohibition of the Female Genital Mutilation Act, 2011 (Revised 2012)

<sup>15</sup> <http://www.anppcan.org/newsite/files/npa%20against%20sec.pdf> access on 20/03/2014

<sup>16</sup> [http://www.nccs.go.ke/index.php?option=com\\_content&view=article&id=69:review-of-national-plan-of-action-for-children&catid=1:latest-news&Itemid=54](http://www.nccs.go.ke/index.php?option=com_content&view=article&id=69:review-of-national-plan-of-action-for-children&catid=1:latest-news&Itemid=54)

<sup>17</sup> The World Conference on Human Rights in Vienna, 1993, recommended that States develop a national action plan identifying steps that the state would take to improve the promotion and protection of human rights

- To promote the respect, protection and fulfillment of all human rights by the State and Non- State actors;
- To strengthen the capacity of all State and Non- State actors to respect, protect and ensure the fulfillment of human rights;
- To promote the human rights based approach to planning, implementing, monitoring and evaluating of programmes in all sectors in the country;
- To mainstream human rights in public policy development and resource allocation.

The NPHR has identified the following as its key priority areas when dealing with child rights issues:

1. Strengthen the enforcement of legislation and policies that enhance the realization of children rights and in particularly against abuse and neglect; and
2. Enhance the implementation of the rights of children belonging to vulnerable or disadvantaged groups, including children with disabilities; children infected and/or affected by HIV/AIDS; orphans; indigent children and children in marginalized areas.

### ***Recommendation***

There should be a full operationalization of the National Policy on Human Rights.

### **(iii) The National Policy on Disability**

This Policy has specific provisions for children with disability. It is currently under review to comply with the Constitution. However, the State has so far not provided adequate resources for the construction or provision of educational services to children with disability, particularly children who cannot be integrated in mainstream schools. The three arms of Government should all be involved in the mainstreaming of PWDs. There is need for a coordination mechanism for the implementation of policies and legislation. This will help in the institutionalization and the mainstreaming of disability concerns. The Sexual Offences Act, 2006 is silent on provisions pertaining sexual violence against children/individuals with disability. The Persons with Disabilities Act requires that all facilities including public transport, school buildings and hospitals, be compliant with its provisions. However these facilities still have no special features for children with disabilities and enforcement is weak.

### ***Recommendation***

1. The State should establish more schools to cater for children with disabilities as not all children with disabilities can be integrated;
2. The State should enforce the requirement that all facilities be accessible to persons with disabilities, especially schools that have integrated learning for children with disabilities;
3. The State should establish special public schools for autistic children as there is currently none operated by the State.

### **(iv) The National Food and Nutrition Security Policy**

This Policy was launched in 2012 and it stipulates strategies that are aimed at addressing chronic hunger and malnutrition currently affecting millions of citizens. Unfortunately, we still have children dying of hunger and malnutrition, particularly in Turkana and among pockets of urban poor. Since agriculture and its related activities remains the main source of livelihood for a majority of Kenyan's especially the rural poor, the State needs to ensure that

the subsistence farmers have access to knowledge, financial services, information and access to markets. Such a strategy will go a long way in ensuring that areas prone to drought and food insecurity do not perpetually depend on external donors to survive, but can also produce their own food. Again, any food intervention made has to be nutrition sensitive so as to address and reduce forms of malnutrition among children. This can be achieved by promoting crop diversification and providing nutrition education to households, especially to mothers. Reducing hunger is not just about increasing the quantity of food, the quality of the food and its nutritional content and safety are also essential.<sup>18</sup> The State has responded to the food crises through policy interventions such as supply, prices and income related policies.<sup>19</sup>

### **3. Key State Actors**

#### **(i) The Department of Civil Registration**

The Department of Civil Registration is responsible for registering births and deaths and has offices in most sub-counties in the country. However, there is no legislation that makes provisions for intersex or transgender children and hence challenges during birth registrations.<sup>20</sup> In 2013, Audrey Mbugua, a transgender person sued both the Kenya National Examinations Council (KNEC) and the Attorney General for failing to recognize her gender. Audrey had also sued the Kenya Police in 2013 for violating her rights when they stripped her naked to her sexual identity. A judgement was delivered in her favour by Lady Justice Mumbi Ngugi who declared that such an act by police officers violated her rights and dignity. She was awarded Kenya Shillings Two Hundred Thousand (Kes.200,000) compensation.<sup>21</sup>

#### **(ii) The Judiciary**

has established Children's courts manned by gazetted Children Magistrates. The Judiciary has gone a step further by gazetting all Magistrates to adjudicate in children matters. The shortcoming with this practice of blanket gazetting of Magistrates to hear children matters is that some Magistrates do not have an appreciation that a different set of legislation exists when it comes to child justice matters. In mid March 2014, Kenya Television Network, one of the local TV Stations aired a series titled "Juvenile Juveniles"<sup>22</sup>. One episode aired the story of a child who had been committed by a Magistrate to prison with adult convicts. He managed to appeal through the advice of one of the adult convicts and was sent to a Borstal Institution. Such a case highlights one of the challenges that are faced in Juvenile Justice.

#### **(iii) The Ministry of Justice, National Cohesion and Constitutional Affairs**

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<sup>18</sup> [http://www.standardmedia.co.ke/?articleID=2000095624&story\\_title=key-action-points-to-combat-food-insecurity&pageNo=2](http://www.standardmedia.co.ke/?articleID=2000095624&story_title=key-action-points-to-combat-food-insecurity&pageNo=2) accessed 20/03/2014

<sup>19</sup> <http://www.foodsecurityportal.org/kenya/food-security-report-prepared-kenya-agricultural-research-institute> accessed 21/03/2014

<sup>20</sup> A draft Bill seeking legal recognition for intersex individuals – people born with both male and female sex organs – has been lying at the AG chambers since 2011

<sup>21</sup> <http://www.africareview.com/News/Second-Kenyan-transgender-wins-case/-/979180/1889050/-/ms4862/-/index.html> accessed 20/03/2014

<sup>22</sup> Jailed Juveniles part I: The story of a fifteen year old boy convicted of robbery with violence <http://www.youtube.com/watch?v=XPPowWJ09m8> accessed 20/03/2014

The Ministry of Justice, National Cohesion and Constitutional Affairs is no longer in existence. The Ministry was reduced to being the Department of Justice under the Office of the Attorney General.

**(iv) The National Police Service**

The National Police Service provides security to all citizens and has established children and gender desks and Child Protection Units (CPU) in selected police stations, mainly in Nairobi<sup>23</sup>. However, these CPUs are virtually non-existent in police station across the country. CPUs and the special desks handle children's cases—children who are in conflict with the law through diversion programme<sup>24</sup>. There is no provision for Child Protection Units under the Children Act, 2001; however, the Children Act (Amendment) Bill provides for CPU's as a child protection facility based at police stations intended to provide a safe and non-threatening environment for children in conflict with the law while in custody waiting to be taken into children institutions and for child victims waiting to be taken for child safety.

**(v) Ministry of Local Government**

The Ministry of Local Government is no longer in existence and its functions transferred to County governments. Some additional and new functions have also been transferred to County governments as listed in Part 2 of the Fourth Schedule of the Constitution.<sup>25</sup>

**(vi) The Ministry of Health**

The Ministry of Health implements health and sanitation policies and programmes. Some of these initiatives focus specifically on child health. These initiatives include: maternal, neonatal and pediatric health of child survival and development strategy, child health policy Integrated Management of Childhood Illness (IMCI) and the National School Health Policy and Guidelines. The State needs to address the challenge of devolving health services and the impact on provision of quality health care to children. A majority of health workers whose employment were transferred from the National government to County governments have since resigned from public service, bringing with it an almost paralysis in County health services, including the running of hospitals. The health workers have cited interference from Members of County Assembly (MCA); delayed salaries; removal of allowances and lack of essential health supplies—such as drugs and equipment as some of the reasons of their mass resignation.

***Recommendation***

1. Since health care service provision has essentially been devolved, County governments need to prioritize increasing the allocation to health services to a minimum of 15% of the entire budget-to be in line with the commitments made under the Abuja Declaration.
2. There is need for the State to conduct an assessment of whether or not it should continue to leave the management of health services to County governments or if the management should revert back to National government.

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<sup>23</sup> The fourteen project areas are; Kilimani, Kamukunji, Buruburu, Kasarani in Nairobi Province, Naivasha, Nakuru, Bondeni, Kitale in Rift Valley Province, Gucha, Kisii, Siaya, Kisumu in Nyanza Province, and Busia and Kakamega in Western Province

<sup>24</sup> <http://ecaf.savethechildren.se/Documents/ECAF%20docs/Leaflet%20Kenya.pdf> accessed on 21/03/2014

<sup>25</sup> Some of the functions for the County governments are Pre-Primary Education; Child Care Facilities; Health care facilities among others

## **4. Key Non State Actors**

### **(i) Civil Society Organizations (CSOs)**

These agencies include local and international non-governmental organizations, Community Based Organizations (CBOs), Faith Based Organizations (FBOs), Trusts and Foundations. These agencies supplement government efforts in provision of services to children. In 2013, the Government proposed amendments to the PBO Act which included a proposal to cap their funding.

#### ***Recommendation***

The government should not continue with the proposed amendments to the PBO Act which in part proposes to limit the funding opportunities that will impact operations of Civil Society Organizations.

### **(ii) Information and data management on children**

There is lack of disaggregated data on children in terms of sex, disability, geographical locations, family earnings, parents' level of education and income, etc which are crucial for planning and resource allocation.

### **(iii) Independent monitoring**

The Kenya National Commission on Human Rights (KNCHR) and the National Gender and Equality Commission (NGEC) have been established pursuant to Article 59(4) of the Constitution. They are among other things, mandated to oversee the promotion and observance of human rights in the country and to promote equality and freedom from discrimination in accordance with Article 27 of the Constitution. However, there should be a Commissioner or designated officer within the Commissions who works specifically on children specific issues.

### **(iv) Financing and budgetary allocation for the children sector**

The annual national budgetary allocation to the Children Department has progressively increased over the years. However, a high percentage of this increment is for recurrent expenditure, with about 10-12% only being allocated to actual development.

## **Chapter 2: Definition of a child**

### **Article 2-Definition of a child**

#### **(i) Legal framework**

The Constitution of Kenya, 2010 under Article 260 defines a child as "*an individual who has not attained the age of eighteen years*". Thus any other law which is in conflict with this definition is considered null and void. The Children Act, 2001 additionally defines a child as any human being under the age of eighteen years.

#### **(ii) Minimum age of criminal responsibility**

Even though the Penal Code was amended and the ages mentioned amended to eighteen years (18) to comply with the Constitutional requirement, the Penal Code still lowers the bar for criminal responsibility and provides that any children from 8 years and above will be held criminally liable. The draft Child Justice Bill, 2012 has provided that the age of criminal

responsibility be raised from 8 years to 12 years. The UPR process has in its recommendations to Kenya also provided that the State should raise the age of criminal responsibility from 8 years to 12 years. However, this has not been realized and children from 8 years and above do get prosecuted for criminal offences.

**(iii) The minimum age for sexual consent**

The Sexual Offences Act, 2006 has criminalized sexual acts with persons under the age of 18 years, even if they give consent. Section 43 (4)(f) of the Act states that children are incapable of making a choice in sexual acts.

**(iv) The minimum age for marriage**

Whereas it is appreciated that the Marriage Bill, 2012 has recently passed through the second reading and is now awaiting the President's signature for it to become law, this legislation has taken too long and should be enacted. Section 4 of this Bill provides that "*a person shall not marry unless that person has attained the age of eighteen years*". This Bill repeals The Marriage Act, (Cap. 150), The African Christian Marriage and Divorce Act, (Cap. 151), The Matrimonial Causes Act, (Cap. 152), The Subordinate Courts (Separation and Maintenance) Act, (Cap. 153), The Mohammedan Marriage and Divorce Registration Act, (Cap. 155), The Mohammedan Marriage, Divorce and Succession Act, (Cap. 156), and The Hindu Marriage and Divorce Act, (Cap. 157) some of which allowed for marriage of persons below the age of 18 years, provided consent was obtained from their guardian or parent(s).

**(v) The minimum age for employment**

Despite its prevalence in Kenya, child labor continues to receive inadequate attention from the State. Data on the extent of child labor is only available from other organizations and not the government. A report released in June 2012 revealed that more than 1.1 million children are engaged in various forms of labor.<sup>26</sup> A Child Labour Policy was proposed in June 2012 at a conference the theme "*Human Rights and Social Justice, Let's End Child Labour*"<sup>27</sup> that was organized by the Ministry of Labour with support of other NGOs (including CISP) and other organizations.

**(vi) Minimum age for alcohol consumption (Alcoholic Drinks and Control Act, 2010)**

The State should put structures in place for the full implementation of the Alcoholic Drinks and Control Act.

**(vii) Minimum age for tobacco consumption (Tobacco Control Act, 2007)**

Just as with the previous legislation, the State should put in place structures for the full enforcement of the Tobacco Control Act

### **Chapter 3: General principles of implementation**

#### **Article 3-Non-discrimination**

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<sup>26</sup> Report released by CESVI

<sup>27</sup> WORLD DAY AGAINST CHILD LABOUR: 12th June 2012. Available at <http://www.cisp-kenya.org/?p=3041&lang=en> accessed on 07/03/2014

### ***Progress on implementation***

#### **(i) Children born out of wedlock**

Article 53(1)(e) protects children born out of wedlock by providing that both parents bear parental responsibility whether or not they were married at the time of the child's birth. This has in effect repealed the section in the Children Act, 2001 that previously provided that a father to a child born out of wedlock could only acquire parental responsibility by acknowledging paternity or maintaining the child.

#### **(ii) Nationality**

The Citizenship and Immigration Act, 2011 now provides that any child born in Kenya has a right to a Kenyan nationality. The law previously discriminated against children born to parents of Nubian origin and children born to mothers of Kenyan nationality only.

#### **(iii) Children with disabilities**

Kenya enacted the Persons with Disabilities Act in 2003 and has subsequently ratified the UN Convention on the Rights of Persons with Disability. Even though the legislation and Convention provide that the State shall put measures in place to ensure that children with disability are not discriminated against, little has been achieved in terms of implementation. The State has not established an institution to cater for children with disabilities such as autism, etc. Parents of children with autism are normally left to bear the burden. Often such children are viewed as a curse. In some communities, they are abandoned by families or kept in chains by their families. A lot of media houses have highlighted the case of children who have either been abandoned by their families due to disability or are being kept in chains by their families, however; no response has been seen coming from the State in response to such TV documentaries if it will take responsibility to provide for care and protection of such children.

### ***Recommendations***

1. Full operationalization the Citizenship and Immigration Act, 2011,
2. There should be an amendment to Section 12 of the Children Act, 2001 to remove the ambiguity on interpretation.

### **Article 4-The best interest of the child**

#### ***Progress on implementation***

#### **(i) Sexual offences**

Even though there is in existence legislative provisions which states that the best interest of the child shall be the primary consideration in all matters concerning children—the practice is not uniform. The State has not put strong mechanisms in place to ensure that this principle is maintained. A case in point is the plight of girls who have been raped/defiled in Wajir, in North Eastern Kenya. The law provides that such cases should go through the judicial process, but cases do get reported where clan members establish Masla<sup>28</sup> where the alleged offenders are fined and the girls' parents (mothers) are forced to withdraw the cases.

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<sup>28</sup> Traditional courts

## **(ii) Parental responsibility**

As has been stated above, the Constitution gives equal recognition to children whether born within or out of wedlock. It is in a child best interest, particularly those born out of wedlock that both parents acquire parental responsibility, particularly on issues involving child custody and maintenance.

### ***Recommendations***

The State should expedite the process of amending the Children Act, 2001.

## **Article 5-Survival and development**

### **(i) Child mortality**

The current government came into office in early 2013 and fulfillment of some of its election pledges abolished maternity fee in State run medical institutions. However, this does not include caesarian deliveries and families still have to bear any additional costs that are associated with such deliveries. Furthermore, State run hospitals and medical centres are not well equipped, with Doctors and Nurses regularly going on strike over inadequate pay, lack of medical supplies or both.

### **(ii) Nutrition**

Kenya has a large part of its territory classified as Arid and Semi Arid Land (ASAL). Turkana County, parts of Marsabit County and a few others are 100% dependent on food aid. Even though the State is aware of this fact, year in year out, images are aired on electronic media of children dying of hunger and malnutrition. The State has the resources, but 50 years after independence, Kenyans are still dying of preventable causes due to poor planning and State bureaucracy. However, children dying of malnutrition is not only restricted to ASAL areas as there are also pockets of poverty among slum dwellers, unfortunately, there is no feeding or nutritional programme in existence for urban poor children.

### **(iii) Child participation**

It must be noted that the State did not provide any information on child participation in its 1<sup>st</sup> Periodic Report. Having said that, it must be noted that the setting up of Children Assembly was a big step towards the inclusion of children in state processes. However, the Government has so far failed to involve children in decisions relating to education. A good example is that of the government's laptop project. Indeed, during the 2013 election campaigns, the Jubilee government, which is currently in power, pledged to distribute laptop computers to school going children. But what the Jubilee government failed to involve children while seeking to implement this election promise. The government failed to find out if having a laptop is one of the immediate needs of a child for example from Wajir County who is learning under a tree in the scorching sun. Or if the laptops would be useful to a primary school girl from Baringo County who has to miss school at least 4 days in a month, due to her menstrual cycle and her parents are too poor to provide her sanitary wear and neither is her school a recipient of the free sanitary pads provided by the State.

### ***Recommendations***

1. Major Policy decisions as the distribution of laptops should seek the view of children.
2. Both national and county governments should allocate funds towards the free sanitary pads distribution.

## Chapter 4: Political/civil rights and freedoms

### Article 6-Name and nationality

CSOs in Kenya agree with the State party that a lot of policy and legislative reform has taken place to ensure that all children born in Kenya are registered and issued with Birth Certificates. Apart from the Constitutional provisions that grants citizenship to various categories of persons in Kenya, the State has gone further and enacted the Kenya Citizenship and Immigration Act, 2011. This enabling legislation to the Constitution also confers citizenship by presumption of foundlings to any child who is or appears to be less than eight years of age; whose nationality and parents are unknown.<sup>29</sup> However, the decision on the Nubian Children case that the Committee of Experts decided in favour of the applicants is under implementation and the Nubian community is now entitled to Kenyan citizenship where they were previously classified as Stateless Persons.<sup>30</sup>

Again, whereas the independence Constitution conferred citizenship of children born to Kenyan fathers, but not Kenyan mothers (where the father is of a different nationality); the Constitution of Kenya, 2010 has cured this mischief and citizenship can now be obtained by children born to Kenyan mothers, irrespective of the nationality of their fathers.<sup>31</sup>

The State has also made it mandatory that all children registering for school must have a copy of their birth certificates and this has increased the number of registrations. However, all data are captured manually on paper, then scanned and entered manually into CRVSS (Civil Registration Vital Statistics System).

### **Recommendation**

The State ought to use appropriate digital technology for data collection to be integrated with CRVSS.<sup>32</sup> This will expand the reach of registration coverage and real-time capture of vital events.

### Article 7-Freedom of expression

Kenya CSOs agree with the State report that it has established what is known as Children Assemblies in each of the 47 counties. There are also Area Advisory Councils that engage the participation of children in all levels. However, not all stakeholders in the child sector take the view of children seriously and often fail to engage children in forums where their views should be taken into consideration.

### **Recommendations**

1. The Freedom of Information Bill, 2012 need to be operationalized so as to give flesh to Article 35 of the Constitution which provides for the freedom of information. Under Article 35, access to information by all citizens includes children hence children should be in a position to access information in child friendly documentation. This includes information on budgeting both at the national and county level. This will enhance child participation in National and County government processes.

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<sup>29</sup> Section 9, The Kenya Citizenship and Immigration Act, 2011

<sup>30</sup> Section 15, 16 and 17, The Kenya Citizenship and Immigration Act, 2011

<sup>31</sup> Article 14(1) of the CoK, 2010

<sup>32</sup> <http://4thestatewire.co.ke/world/37-africa/210-plan-proposes-digital-solutions-to-guarantee-the-right-of-birth-registration-to-children-in-africa>

2. The State ought to infuse the principles of participation as provided for in Article 10 of the Constitution hence give children an opportunity to give their views and the same taken into consideration.<sup>33</sup>
3. The State should progressively create awareness on child participation to break down cultural mindsets that devalue child participation. The Child Participation Guidelines should be reviewed so as to be streamlined to ensure emerging issues are addressed.
4. The process of reviewing the National Plan of Action for Children 2013- 2018 should be fast tracked to align children issues at a national platform.
5. Children issues should be infused in the County Integrated Development Plans

### **Article 8-Freedom of association**

Children Assemblies have been established in each of the 47 Counties.<sup>34</sup> However, they are not well understood outside the children sub-sector.

Whereas children are given an opportunity to exercise their freedom of association and peaceful assembly, the State has also placed certain limitations to the enjoyment of this right. This was evidenced during the 2013 national drama festivals that were held in Mombasa, where a play by Butere Girls High Schools titled “Shackles of Doom” was banned in 2013 as it touched on issues of governance which made some senior government officials in State House uneasy.

### **Recommendations**

1. This being a State led initiative, it should be well publicized and child participation promoted even during County budget forums and such related activities.<sup>35</sup>
2. The State ought to allow children to exercise their right to association and expression as enshrined in Articles 36 and 33 respectively of the Constitution.<sup>36</sup>

### **Article 9-Freedom of thought, conscience and religion**

Article 32(1) of the Constitution provides that “every person has the right to freedom of conscience, religion, thought, belief and opinion”; 32(2) “Every person has the right, either individually or in community with others, in public or in private, to manifest any religion or belief, practice shows that the enjoyment of these rights are not fully guaranteed by the State”. However, some of the judicial decisions pronounced by the High Court of Kenya have taken away the enjoyment of the right to freedom of religion. In 2012, students belonging to the Seventh Day Adventist Church filed a Petition<sup>37</sup> in the High Court in which they were seeking exemption to class attendance on Saturday (Sabbath). In a judgement that was later delivered on 1<sup>st</sup> November 2013, the Judge set aside the interim orders and dismissed the Petition.

There was also “the Hijab case”, that is *SMY V Attorney JR, Miscellaneous Application No. 318 of 2010* that was filed in Court by a student in Kenya High School where the Applicant,

<sup>33</sup> Meaningful participation goes beyond presence of children. Their contributions should influence policy

<sup>34</sup> <http://www.the-star.co.ke/news/article-20543/children-assembly-unveils-standing-orders> accessed on 28/03/2014

<sup>35</sup> [http://www.unicef.org/kenya/media\\_12538.html](http://www.unicef.org/kenya/media_12538.html) accessed on 27/03/2014

<sup>36</sup> <http://kenyalaw.org/caselaw/cases/view/87957>

<sup>37</sup> In the High Court of Kenya at Nairobi, Constitutional and Human Rights Division, Petition Number 82/2012

suing through her mother and next of friend, wanted to be allowed to wear a Hijab to school. Her application was similarly dismissed.<sup>38</sup>

### **Recommendations**

1. The State should develop guidelines as to how to deal with the children rescued from being radicalized so as to incorporate them back safely into the society. Children are still being denied the right to access medical care and education due to their parent's religious beliefs.
2. The State should develop clear guidelines that to be address the situation of ensuring the right to freedom of religion of the parents and the right to access healthcare of the child do not contravene each other.

### **Article 10-Protection of privacy**

The network of child protective services in Kenya is currently challenged by a series of gaps due to the absence or weakness of a coordination mechanism. Currently, there are no clearly defined structures for reporting child violence at the community level, school, and other settings where violence occurs, or for referring victims of violence to the appropriate service provider<sup>39</sup>. These weaknesses and gaps in reporting and managing information may infringe child victim's right to privacy.

### **Recommendations**

The State should scale up establishment of fully operational CPUs in all the counties and also establish coordination mechanisms that provide guidance to child protection actors.

## **Chapter 5: Family environment and alternative care**

### **Article 16-Protection against child abuse and torture**

The State is yet to enact into legislation the Prevention of Torture Bill.<sup>40</sup> Also, despite the National Children's Policy (2008) and the Legal Notice (2001) which outlaw corporal punishment, the vice still continues in schools and within households.<sup>41</sup>

### **Recommendations**

1. The State should enact the Prevention of Torture Bill.
2. The State to establish a national system of data collection on cases of abuse disaggregated by form, age and gender including ensuring that the information is accessible by all stakeholders for accountability and transparency.

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<sup>38</sup> [http://www.kenyalaw.org/Downloads\\_FreeCases/88818.pdf](http://www.kenyalaw.org/Downloads_FreeCases/88818.pdf) accessed on 17/03/2014

<sup>39</sup> Violence against Children in Kenya: Findings from a 2010 National Survey. Summary Report on the Prevalence of Sexual, Physical and Emotional Violence, Context of Sexual Violence, and Health and Behavioral Consequences of Violence Experienced in Childhood. Nairobi, Kenya: United Nations Children's Fund Kenya Country Office, Division of Violence Prevention, National Center for Injury Prevention and Control, U.S. Centers for Disease Control and Prevention, and the Kenya National Bureau of Statistics, 2012

<sup>40</sup> [www.kenyalaw.org](http://www.kenyalaw.org)

<sup>41</sup> The clip in the link provided shows a case in point where a school head teacher disabled a primary school child as a result of subjecting her to corporal punishment. [www.youtube.com/watch?v=p\\_v77Bb2q](http://www.youtube.com/watch?v=p_v77Bb2q) uploaded by KTN Kenya, Nov 12<sup>th</sup>, 2013

3. The State should partner with CSOs in popularizing alternative forms of discipline for children in institutions and within households.
4. The State should establish and enforce a national child protection code of conduct for all state and non-state actors working with children on their commitment to uphold child protection.
5. The State should enhance partnership with CSOs for State actors capacity building on handling child abuse cases.

### **Article 18-Protection of the family**

The draft Family Protection Bill has remained a draft Bill for over 7 years since it was first drafted.

#### ***Recommendations***

1. The State to enact the Family Protection Bill
2. The State should make necessary amendments to be made on Matrimonial Property Bill, 2012

### **Article 20-Parental responsibility**

There is still a major gap in effective parenting.

#### ***Recommendations***

1. The State should to enhance its work with CSOs to strengthen holistic parenting programmes and skills and also enforce parental responsibility.
2. The State should develop parenting curriculum and incorporate parenting skills training in adult and continuing education curriculum and other adult/teenage parents programs/forums.
3. The State should put in place mechanisms for monitoring of day care service institutions and care providers.
4. The State should develop and roll out guidelines for operationalization of daycare services and put in place mechanisms for monitoring of day care service institutions and care providers.
5. The State should revise the mandate of Area Advisory Councils to include supervision of day care services under their area of jurisdiction.
6. The State should enhance capacity building among caregivers based on emerging children issues e.g. autism, psychosocial therapy etc
7. State to establish a national data base of care givers from Sub County to County level to enable the national government have an effective monitoring of service delivery

### **Article 24-Adoption**

#### ***Recommendations***

1. The State should popularize adoption especially in the rural areas, where the practice of guardianship and foster care is more common.
2. The State should enhance information dissemination on adoption countrywide through public campaigns.
3. The State should strengthen coordination between CCIs and adoption societies to enhance smooth adoption process.

4. The state to establish a data base on prospective adoptive parents and disseminate this information from Sub County to National level.

### **Article 25-Separation from parents**

The State established the National Standards and Best Practices for Charitable Children's Institutions (2011). Despite the existence of the Charitable Children's Institutions Regulations (2005), many institutions keep children and are not registered.

### **Recommendations**

1. Congestion of children within CCIs despite the CCIs Regulations (2005) and the National Standards should be addressed by actions such as the construction of additional CCIs.
2. Inspection of institutions that keep children should be done at regular intervals to ensure that matters arising are addressed and popularize the findings of the inspections.<sup>42</sup>
3. Children living and working on the streets should undergo rehabilitation that is inclusive of vocational training, to ensure that they do not return to living on the streets.
4. The State to consider allocating OVC Cash Transfer to CCIs (due to dire needs of some children within CCIs).
5. The State to put up mechanisms for separation of children in conflict with the law from Children in Need of Care and Protection.
6. Level of awareness on alternative care among community members is still wanting. The State should work with CSOs working in the children sector to popularize alternative care for separated children and/ or for children without parental care.
7. The State (Children Department) should develop an annual calendar of inspections to enhance effective monitoring of service delivery within CCIs.
8. The State (Children Department) should work with CSOs to establish verification mechanisms to ensure poverty is not the major reason for institutionalization of children.
9. The State (Children Department) should work with CSOs to popularize National Child Participation Guidelines among children.
10. The State should work with the Charitable Children Institutions to ensure adherence to National Standards and Best Practices within CCIs.
11. There is need for enhanced sensitization sessions on National Standards to community members to reduce level of unnecessary institutionalization of children and improve smooth reintegration process.

## **Chapter 6: Basic health and welfare**

### **Article 13-Children with disabilities**

#### **(i) Enrolment of children with disabilities**

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<sup>42</sup> Establish accessible local point areas where the information on status of CCIs can be shared with the public for accountability purposes

The last few years has seen a general increase in school enrolment for children with disabilities. However this enrolment rate has not been at par with that of other children. For instance, in 1999 there were only 22,000 learners with special needs and disabilities enrolled in special schools, units and integrated programs. This number rose to 26,885 in 2003 and 45,000 in 2008, which compares poorly with the proportion in general education. In 2008 there were 1,341 special units and 114 public special schools in the country which include vocational and technical institutions that cater for learners with special needs and disabilities.<sup>43</sup>

There is inadequate infrastructure in schools. Schools do not have capacity to accommodate children with different forms of disabilities in particular, ASAL regions lack infrastructure that is disability friendly. There are no schools that cater for children with multiply impairments.<sup>44</sup>

In addition to the FPE allocation, children with disabilities get an extra Kenya Shillings Two Thousand (Kes. 2,000). However this amount only caters for children attending formal institutions.<sup>45</sup> The proposed amendments to the Persons with Disabilities Act are only focused on persons with albinism. The amendments do not provide for adequate provisions of persons with mental disabilities and issues of abuse and exploitation of persons with mental and psychosocial disabilities.<sup>46</sup>

### ***Recommendation***

The State should enforce the provisions of the Persons with Disability Act (2003) and also pass the amendments so that persons living with disabilities are adequately protected by the law.

## **Article 14-Health and health services**

### **(i) National Hospital Insurance Fund (NHIF)**

The National Hospital Insurance Fund (NHIF) only caters for treatment costs incurred as an in-patient and does not include treatment costs incurred as an out-patient. It is commendable that NHIF has been engaged in active campaigns to encourage members of the public to take up subscription. However, this still remains beyond many who live below the poverty line which means that thereby making it impossible for them to benefit from the scheme.

### **(ii) Free healthcare for children under 5 years**

The commencement of free healthcare for children aged less than 5 years has contributed towards reduced child mortality rates.<sup>47</sup> However, it must be noted that the State has not provided for free medical services for children aged between 5 years to 18 years.

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<sup>43</sup> SNE Draft Policy, 2009

<sup>44</sup> Policy framework for education-Paper Kenya School Libraries (2012) and The Kenya National Survey of People with Disabilities (2007)

<sup>45</sup> Mechanisms for accessing and accountability of the Persons With Disabilities Fund (2011) by the National council of persons with disabilities.

<sup>46</sup> Kenya Society for the Mentally Handicapped on the shortcomings of the Persons With Disabilities Act, 2003 and The Persons with Disabilities (Amendment ) Bill, 2010

<sup>47</sup> <http://data.worldbank.org/indicator/SH.DYN.MORT> accessed on 27/03/2014

### ***Recommendation***

The Constitution defines a child as one who is below 18 years of age. Therefore, the State should also provide free health care for every child under the age of 18 years and not just focus on children below 5 years since they are potentially vulnerable.

#### **(iii) Maternal health**

The free maternity health service only caters for normal delivery and does not include Caesarean births or complications that may arise during delivery. In some hospitals like Pumwani Maternity Hospital, patients are still required to buy items such as gloves, cotton wool and water.

### ***Recommendations***

1. The State should fast track the implementation of the free maternity health service in collaboration with the County governments. This is because it was a declaration by the executive yet the health service is a function of the county government. This therefore calls for the development of the National Health Policy which is required under Schedule 4 of the Constitution.
2. The State should explore the possibilities of child care for adolescent mothers. There is a requirement for a Child Health Bill which is in the process of being developed. The bill needs to be finalized so as to give provisions of dealing with child health care.

#### **(iv) Cancer care**

According to the regional cancer registry at KEMRI, about 80% of reported cases of cancer are diagnosed when the disease is at an advanced stage and therefore little can be achieved in terms of curative treatment. This is largely due to the low levels of awareness of cancer signs and symptoms; inadequate screening services; inadequate diagnostic facilities; and poorly structured referral facilities.

The country has few Oncologists who are mainly based private hospitals in Nairobi which makes it difficult for a great majority of the population to access cancer treatment services. Also, cancer treatment infrastructure in Kenya is inadequate and some cancer management options are not readily available. This has necessitated some Kenyans to seek cancer treatment abroad.

Cancer is treated through medical, surgical or radiation therapy. Therefore, effective treatment requires that all these modes of treatment be available in the same setting to avoid distant referral and delays in treatment administration.

The essential drugs list does not include chemotherapy for cancer while some of the very essential drugs for pain management are rare to find in most public hospitals.

### ***Recommendations***

1. There is need for clear policies concerning terminal pain management, supportive and palliative care for cancer patients in Kenya. Some of the main impediments to palliative care in Kenya include shortage of financial and human resources, lack of awareness and legal restrictions on the use and availability of analgesics.
2. The State should equip hospitals with the capacity to make early diagnosis of cancer and enforce the Kenya National Cancer Control Strategy 2011-2016.

## Chapter 7: Education, leisure and cultural activities

### Article 11-Education

The education sector is faced with a number of challenges which include access to free and compulsory primary education; quality and relevance of education; access to education for children with special needs; conflicting national and county governance structures; staffing of teachers especially in marginalized areas and low female-male teacher ratios; among others.

Kenyan CSOs acknowledge that the Education Sector is the highest budgeted sector in the country in terms of percentage. But, there is concern that approximately 90% of the allocated budget goes to recurrent expenditure. In 2011/2012 the recurrent budgetary expenditure was at Kenya Shilling One Hundred and Forty Nine Billion (Kes. 149 Billion) while only Kenya Shillings Seven Billion (Kes. 7 Billion) went to Development Budgetary Expenditure.<sup>48</sup>

#### (i) Access to free and compulsory basic education

There are several barriers hindering access to free and compulsory basic education in Kenya. These include low teacher to student ratio, the shortage of teachers due to the massive enrolment of pupils, insufficient learning facilities, poor learning environment particularly in arid and semi arid areas and urban slums. Further, it is estimated that there are approximately over 1 million children who are still out of school, the majority of whom, are in ASAL areas, pockets of poverty and urban slums.<sup>49</sup>

Delays in the disbursement of Free Primary Education funds have also negated delivery and attainment of quality education which has further been contributed by alleged incidences of corruption and embezzlement of funds meant for Free Primary Education. In spite of increased enrolment there are still inequalities between the rich and poor as more parents opt for private schools, which are perceived to offer better quality education than public schools.<sup>50</sup>

There has also been increased incidences of children unable to access education due to the extra fee levies and charges in public schools despite Basic Education being articulated as free and compulsory as provided for under Article 53(1)(b) of the Constitution and the Basic Education Act, 2013. This has particularly affected children from poor backgrounds who have performed well but are unable to transit from primary to secondary education as they cannot afford the school fees. It has been reported in the media that for a Form One student to access a national public secondary school has to pay 1<sup>st</sup> term fees of an average of Kenya Shillings Sixty Thousand (Kes. 60,000).

#### (ii) Sanitary pads

A national research conducted by Girl Child Network (GCN) established that the participation of girls in education was hindered by difficulty in managing their menstruation process. Indeed, it emerged that a girl would miss school for an average of 3 to 5 days a

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<sup>48</sup> Economic Survey 2012, KNBS, P.43

<sup>49</sup> See <http://www.education.go.ke/ShowPage.aspx?departm%20ent=1&id=1168> accessed 19/03/2014

<sup>50</sup> UWEZO <http://www.twaweza.org/uploads/files/When%20will%20our%20children%20learn.pdf> accessed 19/03/2014

month due to lack of sanitary towels, resulting to missing 12 to 15 days a term, a total of 39 to 45 days a year. In response thereto, the State introduced the National Schools Sanitary Towel Program in 2011 to among other things, deal with gender disparities in education and particularly girl child education in ASAL and other marginalized regions.

It has been established that the budgetary allocation needed to reach the 2.5 million adolescent girls needing sanitary towels in both primary and secondary schools was estimated at Kenya Shilling Two Billion, Four Hundred Million (Kes. 2.4 billion) a year. However the amount allocated in 2011/2012 was a paltry Kenya Shillings Three Hundred Million (Kes. 300 million), a shortfall of nearly Kenya Shillings Two Billion (Kes. 2 Billion). The budgetary allocation for the Ministry of Education for this programme under in the 2013/2014 budget was reduced by Kenya Shillings Ninety Nine Million (Kes. 99 Million) to Kenya Shillings Two Hundred and One Million (Kes. 201 Million). This has resulted to only 568,925 adolescent girls in primary education benefitting from the programme. Finally, the national programme for the provision of sanitary pads has been rolled out country wide and is still yet to reach all the deserving and poorest sections of the community.<sup>51</sup>

### **(iii) Quality and relevance of education**

According to a study by UWEZO, a National NGO, a typical Standard 8 pupil could not do basic mathematics that is meant for Standard 3 pupil. This brought into sharp focus the issue of the quality of education in Kenya and in particular, the question of teacher attendance, monitoring and their quality of delivery, implementation of school curriculum and syllabus and the assessments of the children. Though the Ministry of Education is mandated to monitor the quality of education offered in schools including the implementation of the school curriculum, there is lack of effective and regular monitoring on the implementation of the curriculum including delivery of quality education by the Ministry.

### **(iv) Education for children with special needs**

Children with special needs lack sufficient, adequate, accessible and quality special schools or schools that can integrate children with special needs. Educational facilities do not adequately cater for children with disabilities including having sufficient teachers who have been trained on Special Needs Education. Most of the educational facilities offering Free Primary Education are also not easily accessible to students with physical disabilities. In response, the Government launched a Special Needs Education (SNE) Policy Framework that seeks to address how the Government will work with stakeholders to transition to an inclusive education approach in line with *Education for All* by 2015.

Though the plight of children with special needs is included in the Basic Education Act, integration of children with special needs into the regular school system is still a challenge at both primary and secondary level. Transition levels for children with special needs to the secondary schools is still a challenge as they are required to have the same pass marks as other children. Furthermore national, provision and deistic schools do not have the capacity to integrate children with special needs.

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<sup>51</sup> Even though the State did at some point partner with Royal Media under the *Inua Dada* Campaign which was launched by the First Lady, the MoE and Citizen in Marigat, Baringo County to complement the National Schools Sanitary Towel Program for an increased budgetary allocation to the program, not all schools in the country have benefitted

#### **(v) Budgetary allocation on the right to education**

The on-going debate about the State's plan to introduce laptops as a teaching and learning tool in public primary schools highlights the misplaced priorities of Government for the education sector. While the Government continues in its plans to acquire laptops for pupils who will be joining Standard 1 in January 2014; there are many schools that lack basic infrastructure such as adequate teachers, classrooms, desks, books, electricity, etc. Meanwhile the Capitation Grants of Kenya Shillings One Thousand and Twenty (Kes. 1,020) provided per pupil to cater for learning materials, operational costs and other school improvement activities remain wholly insufficient to provide even for the most basic supplies and facilities.<sup>52</sup>

#### **Recommendation**

1. Enforcement of the implementation of the Basic Education Act (2013) to ensure access to quality learning environment and attainment of quality *Education by All* children with focus on public and non-formal schools.
2. Transparency and accountability on the disbursement of FPE funds notwithstanding increased prioritization of budget allocation towards development programs in the education sector.
3. In articulation of basic education being free and compulsory, the State should ensure that Free Primary and Secondary Education funds cater for the extra school levies being charged by schools.
4. The State through the Treasury should increase budgetary allocation to the provision of sanitary towels under the Ministry of Education National Schools Sanitary Towels Program, in a bid to ensure that all girls in ASAL, pockets of poverty and urban slums are able to access the sanitary towels. This will enhance girl child education which has been a growing concern in these areas.
5. The National and County Government structures should urgently demarcate and synergize their roles within the Education Sector.
6. The State should ensure that there are adequate incentives for teachers working in ASAL areas, particularly for female teachers as a retention mechanism.
7. The State should adopt inclusive education as a critical approach towards implementing Education in the country so as to ensure that all children including those with special needs and in particular children with disability access quality education.
8. The State should incorporate a compulsory unit on Special Needs Education in the Teacher Training Curriculum. This will ensure every teacher has basic skills on special needs education and therefore able to articulate inclusive education.
9. The National and County Government should strengthen vocational training centers and other programs that would facilitate acquisition of skills by children who are out of school including those unable to transit to higher levels of education.

#### **Article 12-Leisure, recreation and cultural activities**

The Basic Education Act, 2013 has banned holiday tuition that had impeded other development processes of the child including their right to play and leisure. The holiday tuition had been introduced by schools as a measure of academic achievement; however assessments revealed that this was further negating other components of child development and growth.

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<sup>52</sup> Education Sector Report 2013/14-2015/16 Medium Term Expenditure Framework, October 2012

All schools in Kenya participate in cultural activities such as drama and music festivals that are conducted from the zonal level to the national level. Such festivals have given a positive impact as they ensure appreciation of cultural diversity and that culture is shared and passed from one generation to the next. In addition they are used as platforms where children can express their views on pertinent issues affecting them and the country. However, there are instances where the children have been “muzzled” in speaking out on certain national concerns as was the case in the play by Butere Girls High School titled “Shackles of Doom” that was banned in 2013.

Despite County governments by-laws that provide that for the setting aside of land for recreational activities and child play areas in all neighborhoods and suburbs, there are instances where such lands have been grabbed by private developers who collude with corrupt government officials.

The State through the Ministry of Education has established Talent Academies to facilitate, promote and nurture talent and skills amongst the young people. However it is of concern that these so called “Talent Academies” are academic schools which have been branded as such based on the fact that the schools perform well in certain co-curricular activities such as sports and drama. For example Maseno School and Shimba Hills School were branded Talent Academies due to their prowess in basketball; Kerugoya Girls for hockey; Kakamega High School for rugby during national secondary schools competitions. Thus it must be noted that these schools admit and retain students on the basis of academic performance and less on talent as these talents are incorporated as co-curricular activities in the school program.

As much as the Ministry of Education has provided activities in schools to cater for play, leisure and cultural activities, many of the schools do not fully provide for them as they place more emphasis on academic performance.

### ***Recommendation***

1. There is need for the State to clearly define what “Talent Academies” really mean as per the set international guidelines. It should proceed to establish purely Talent Academies where children are enrolled by merit of their talent.
2. Talent Academies should also be inclusive of children with disabilities and therefore incorporate the necessary infrastructure and ensure a supportive environment.
3. There is need for the National and County governments to hold planning officers responsible for land that is sold to private developers and also that also ensure that land is set aside for recreation facilities. Further, the State should ensure that all housing projects include safe play areas for children.
4. The State should incorporate the right to play as a critical approach to Early Childhood Development Programs.
5. The Ministry of Education should ensure full implementation of co-curricular activities which should be enjoyed by all children including those in upper primary and Form 4.

## **Chapter 8: Special protection measures**

### **Article 15-Child labour**

Despite its prevalence in Kenya, child labour has over the years not received adequate attention from the State. A report released in June 2012 revealed that more than 1.1 million children are engaged in various forms of labour.<sup>53</sup>

### ***Recommendation***

1. The State should approve and put mechanisms in place for the implementation of the recently developed Child Labour Policy.
2. The State should strengthen the capacity of the institutions responsible for the control and protection of child labour.

### **Article 17-Administration of juvenile justice**

CSOs wish to acknowledge that the Judiciary, through the Judicial Transformative Framework, 2012-2016 has embarked on increasing the number of Court buildings and the rehabilitation of old Court rooms. The Judiciary has also increased the number of Magistrates gazetted to adjudicate on matters concerning children.<sup>54</sup> However, the recruitment and gazetting of Magistrates' has not matched the recruitment of Court Clerks or Prosecutors by the Directorate of Public Prosecutions (DPP). Thus matters do at times get delayed, for instance, if two Courts have to share one Court Clerk. Another short coming with the blanket gazetting of Magistrates to adjudicate Children matters is that some of these Magistrates do not have an appreciation of the fact that there are different rules of procedure in criminal matters of children who are in conflict with the law. That capital punishment can never be prescribed to a child and that child matters have to be concluded within six months.

### ***Recommendations***

1. Make legal aid available to all children who are brought before a Court of Law;
2. Train newly appointed and gazetted Children Court Magistrates on the rules of procedure in child related criminal matters.

### **Article 21-Protection against harmful social and cultural practices**

The Prohibition of Female Genital Mutilation Act, 2011 was passed to address cases of FGM such as providing prohibitive jail sentences and fine to persons found guilty of being involved in FGM. The practice of child marriages is also closely linked to FGM as the girls, after undergoing FGM, often feel that they are now women, eligible for marriage and not in need of education. This increases incidences of primary school drop outs. The State has recently appointed a Chair of the FGM board and it is yet to be seen the impact of this board in coming up with policies and the coordination of activities aimed at addressing and eradicating FGM.

### ***Recommendations***

1. The State has to put in mechanisms in place to eradicate the practice of beading among the Samburu community by its Morans as this practice does result in infanticide; early child marriages; sexual exploitation and forced abortions. This also applies to Pastoralist communities that still practice these vices.
2. Enhance public awareness about such harmful cultural practices and the laws in place.

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<sup>53</sup> Report released by **CESVI**

<sup>54</sup> Children Court Magistrates were previously gazetted to work as such in a station – they would lose their jurisdiction to act as Children Court Magistrates upon transfer

3. Enact or harmonize criminal laws against offences committed against children across the East African Community (EAC).

### **Article 22-Children in armed conflict**

There has been increased reporting of children being killed or attacked by armed gangs in conflicts over natural resources; or stock theft. The theft of cattle is most common between the Pokot and Turkana communities. However, the State has not been in a position to bring to an end such inter-communal conflicts which mostly affect children.

### **Recommendation**

The State should increase access to education and the economic welfare of the people in these communities where children are often caught up in ethnic conflicts. With access to education, access to economic activities and reduction in unemployment; fewer young men will turn to crime, which makes children vulnerable and puts them at risk during the raids.

### **Article 23-Refugee children**

Kenya continues to host a large population of refugee children in Dadaab and Kakuma Refugee Camps. In 2010 the State hosted 151,454 refugee children and 61,232 child asylum seekers. Different organisations offer services addressing violation of refugee rights including sexual and gender based violence. The Department of Refugee Affairs has maintained a presence in Refugee Camps and supported camp activities. In order to ensure the better protection of the rights of unaccompanied refugees and, asylum-seeking children, the State Party has individual registration mechanisms for children and any child who enters the country unaccompanied is registered and issued with individual documentation within the shortest time but not longer than 3 months.

### **Recommendations**

- (i) The State should improve the security and protection of refugee children
- (ii) The State should ensure that any repatriation of a refugee family, or any pronouncement that it makes, takes into consideration the principle of the 'best interest of the child'.
- (iii) The State should put in place proper mechanisms for identification and assistance of refugee children at risk of abuse, neglect and exploitation; and
- (iv) There should be systematic engagement with the refugee community on the protection and assistance of refugee children at heightened risk- most of the work is left to UNHCR and NGOs such as HIAS to carry out child protection and assistance

### **Internally Displaced Persons (IDPs)**

Kenya has had a considerable number of IDPs after the post-election violence that rocked the country in 2007/08. Within IDPs, you'll also find children and some without families. The State enacted the Internally Displaced Persons Act, 2012 to provide protection and assistance to internally displaced persons.<sup>55</sup> The process of developing this legislation was championed by civil society organizations within the Protection Working Group on Internal

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<sup>55</sup> The Prevention, Protection and Assistance to Internally Displaced Persons and Affected Communities Act, 2012

Displacement (PWGID).<sup>56</sup> The State has also recently kicked off the process of closing all remaining IDP camps<sup>57</sup> in various parts of the country by launching a Kenya Shillings Three Billion, Two Hundred Million (Kes. 3.2 Billion) ex gratia cash payment programme for all IDPs resulting from the 2007/08 post-election violence. The cash payment compensation involves payment of Kes. 400,000 per household to enable them buy land. The State also gave a firm commitment to ensure that all the remaining IDP camps and those evicted during the Mau forest eviction exercise will be compensated by the end of September 2013.

Despite these positive developments by the State, the implementation of the IDP Act has not commenced despite it coming to effect in February 2013. A key aspect to this implementation is the establishment of the National Consultative Coordination Committee which is mandated with a number of functions including to coordinate prevention and preparedness efforts, protection and assistance to IDPs throughout their displacement until a durable solution is found and to host communities as needed and to raise national awareness, sensitize and facilitate and coordinate training and education on the causes, impact and consequences of internal displacement.

The establishment of this Committee is of great importance given that it will enable the State to have a well established institutional framework to deal with the problem of internal displacement. The IDP Act will also eliminate the Ad Hoc, often political interventions when it comes to offering protection and assistance to victims of internal displacement. It is crucial to note that the State has closed down the remaining IDP camps related to the Post Election Violence. There are however still a considerable number of IDPs resulting from other causes of displacement such as the recent flooding in Baringo where more than 5,000 people were displaced. According to the Kenya Red Cross, the recent tribal conflict in Moyale<sup>58</sup> resulted in the displacement of thousands of residents and the death of a number of people.

### ***Recommendations***

1. The State should implement the Prevention Protection and Assistance to IDPs and Affected Communities Act, 2012 to ensure all genuine IDP families and their children are resettled
2. The State should relocate all vulnerable communities, IDPs settled in disaster prone areas such as flood plains, steep slopes etc to safer settlements.

### **Article 27-Sexual exploitation**

The cross examination of the survivor is humiliating and this hinders many children to report cases of sexual exploitation. There is conflict between the culture and the law

### ***Recommendation***

1. Creation of new Children Courts and Operationalization of children courts which have been dormant i.e. Kakamega, Kisumu (some former Court rooms are now used as stores and administrative offices)

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<sup>56</sup> The PWGID is a national coordination forum that convenes organizations working on internal displacement issues in Kenya. It is co-chaired by the Kenya National Commission on Human Rights and the Directorate of Special Programmes (Ministry of Planning and Devolution)

<sup>57</sup> <http://www.capitalfm.co.ke/news/2013/09/uhuru-ruto-launch-sh3bn-idp-re-settlement/>

<sup>58</sup> <http://reliefweb.int/report/kenya/fresh-conflicts-moyale-and-turkana> accessed on 23/03/2014

2. Creation of awareness on the magnitude of sexual abuse and engaging with stakeholders with a view of implementation of a better system of court case management
3. Proper gathering and preservation of evidence
4. Full implementation of the regulations and the law
5. Regulations to be attached on the cross examination of a child- there is need for a detailed regulations for the cross examination of a child.
6. Violence Against Study – brought out the high exploitation of children- the government is supposed to work on a response strategy. Push for the finalization and dissemination of the response strategy under the VAC study.

### **Article 29-Sale, trafficking and abduction**

While the State has enacted the Counter-Trafficking and Persons Act, 2010; there are an increasing number of reports on child trafficking, especially from the rural areas to urban under the pretext of enrolment in better schools that turn out to be slavery and forced domestic labour. Additionally, the State has neglected the plight of children with albinism by failing to adopt measures that would protect them from attacks, kidnappings and killings.<sup>59</sup> Media reports indicate the increased trafficking of persons with albinism to Tanzania for ritualistic sacrificial purposes.<sup>60</sup>

Despite the enactment of legislation, the State has not fully complied with the minimum international regulations for the elimination of trafficking. This includes implementing its national plan of action, addressing the role of law enforcement officials in trafficking, or providing adequate anti-trafficking training to state officials, including diplomats, police, labour inspectors, and children's officers. Additionally, the State has failed to investigate alleged trafficking by officials and high-ranking members of society.<sup>61</sup>

### **Recommendations**

1. Implement the National Plan of Action, addressing the role of law enforcement Officers in trafficking;
2. Sensitize more Immigration and border control Officers on recognizing persons at risk of trafficking

### **Article 30-Children of imprisoned mothers**

Lang'ata Women Prison in Nairobi has an excellent programme where children of imprisoned mothers are provided to with access to basic education and health care. The warders at the Prisons do accompany the children of imprisoned mothers to school and back to the prison facilities at the end of the learning period. However, imprisoned mothers are only allowed to keep their children with them in the prison to age four (4) years. Some of these mothers do not have families outside of prison who are willing to take their children and look after, yet the law provides that they can only remain with their mothers in prison for as long as they are below 4 years of age.

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<sup>59</sup> (US Department of State Report) <http://www.state.gov/j/tip/rls/tiprpt/2011/164232.htm> accessed 18/03/2014

<sup>60</sup> <http://www.independent.co.uk/news/world/africa/kenyan-jailed-for-trying-to-sell-albino-in-tanzania-2057770.html> accessed 18/03/2014

<sup>61</sup> (US Department of State Report) <http://www.state.gov/j/tip/rls/tiprpt/2011/164232.htm> accessed 18/03/2014

***Recommendation***

1. Cases of children of imprison mothers who have attained the age of 4 years, should be considered on case by case basis. Reason being, some mothers have no families, outside prison, willing to take their children as the prison cannot keep them anymore.
2. The State should build more institutions for the care and protection of children so that children of imprisoned mothers, who are over 4 years of age, and have no relative to take them in, can be taken by such institutions as they await their mothers release, if the sentence is not capital.

**ANNEXURES**