

**KENYA'S ECONOMIC AND SOCIAL RIGHTS COPMLEMENTARY REPORT**

**PRESENTED TO**

**THE UNITED NATIONS CONVENTION ON CHILD RIGHTS (UNCRC)  
COMMITTEE**

**SUBMITTED BY THE EAST AFRICAN CENTRE FOR HUMAN RIGHTS  
(EACHRights)**



## **COUNTRY CONTEXT**

Kenya is an East African country covering a total area of 582,650km<sup>2</sup>, of which 560,250km<sup>2</sup> constitutes dry land while water takes the rest of about 13,400km<sup>2</sup>. Approximately 80% of the land area is arid or semi-arid and only 20% is arable. The Kenyan population census carried out in 2009 indicates a population of 38,610,097 out of whom 10.9 million school-going children were identified. Whereas no figure was given for the overall population of children, it is estimated that children constitute close to 53% of the entire population. The enactment of a new Constitution by Kenyans in August 2010 ushered in a new dispensation where the country is governed at two levels- The national government and 47 county governments. The two tiers of government are distinct and interrelated, conducting their respective functions on the basis of consultation and cooperation.

## **PROGRESS ON IMPLEMENTATION AND RECOMMENDATIONS TO THE STATE**

### **1. Legal and policy framework**

Kenya domesticated the UN Convention on the Rights of the Child (UNCRC) in 2001 by enacting a Children's Act, 2001. The amendment of the Children Act, 2001 has been ongoing since 2006 and has not yet been completed. Kenya also developed a National Plan of Action for Children (NPA) 2008-2012 which made little contribution to strengthening coordination within the children sector because due to the failure to develop an action plan thus leading to it not being fully implemented. The development of a comprehensive NPA 2013-2017 has also commenced but the same has not been completed to date.

On the Optional Protocols to the UNCRC, the State signed the Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography in 2008 but has not ratified the same. It is also of great importance that Kenya signs and ratifies the third Optional Protocol on a Communications Procedure.

There is no Ministry that deals specifically with children matters since the he Children's Department was placed under the Ministry of Labour, Social Security and Services in 2013. The current Cabinet Secretary (Minister) does not have a full appreciation of children matters. This decision may have been advised by the fact that children need social protection. However, children matters are very complex and go just beyond just social protection. Further, the National Council for Children Services (NCCS) has had varied success in putting children issues within the public domain. This could be due to the lack of clarity of roles between the NCCS and the department of children services.

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.

In 2013, the Government proposed amendments to the PBO Act that governs Civil Society Organization (CSOs), which included a proposal to place a cap on Public Benefits Organizations on international/foreign funding at Fifteen (15%) of total funding. This threatens to roll back the gains made on CSOs in the promotion and protection of children's rights.

Under the new Constitutional dispensation, health care has been devolved to the County Governments. 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 management 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. The State needs to urgently address the challenge of devolving health services and the impact on provision of quality health care to children.

## **Recommendations**

### **The State should:**

- a) Finalise the development of the National Plan of Action for Children (NPA) 2013-2017 and expedite the amendments to the Children Act, 2001.
- b) Ratify the Optional Protocol to the UNCRC on the Sale of Children, Child Prostitution and Child Pornography; and sign and ratify the third Optional Protocol on a Communications Procedure.
- c) Move the department of Children services from the ministry of labor social security and services to the office of the deputy president
- d) Establish the office of a children’s ombudsman or a commission that deals specifically with children or a children’s desk within one of the already existing commissions such as the Kenya National Commission on Human Rights (KNCHR)
- e) Ensure that since health care service provision has essentially been devolved, county governments should prioritize and increase the allocation to health services to a minimum of Fifteen percent (15%) of the entire budget so as to be in line with the commitments made under the Abuja Declaration.
- f) Conduct an assessment on the efficacy of leaving the management of health services to County governments or if this should revert back to the National government.
- g) Stop the push to amend the PBO Act which seeks among other this, propose a cap on the funding from international/foreign donors to PBOs at Fifteen percent (15%) of the entire organizational funding.

## **2. Article 28 : The Right to Education**

There are several barriers to 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 One million children who are still out of school, the majority of whom, are in ASAL areas, pockets of poverty and urban slums.<sup>1</sup>

Though the Education Sector receives the highest budgetary allocation in the country in terms of percentage, there is concern that approximately Ninety percent (90%) of the allocated budget goes to recurrent expenditure. In 2011/2012 the recurrent budgetary expenditure was at Kenya Shillings One Hundred and Forty Nine Billion (Kshs. 149 Billion) while only Kenya Shillings Seven Billion (Kshs. 7 Billion) went to Development Budgetary Expenditure.<sup>2</sup>

There has also been increased incidences of children unable to access education due to 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

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

<sup>2</sup> Economic Survey 2012, KNBS, P.43

been reported in the media that for a Form One student to access a national public secondary school, he or she has to pay 1<sup>st</sup> term fees of an average of Kenya Shillings Sixty Thousand (Kshs. 60,000/-) or the equivalent to approximately US Dollars Six Hundred and Seventy (USD 670), an amount that is very high considering that almost Fifty percent (50%) of the entire population lives below the poverty line.

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. Indeed, it emerged that a girl would miss school for an average of 3 to 5 days a 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 (Kshs. 300 Million), a shortfall of nearly Kenya Shillings Two Billion (Kshs. 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 (Kshs. 99 Million) to Kenya Shillings Two Hundred and One Million (Kshs. 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>3</sup>

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.

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.

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. There are many schools that lack basic infrastructure such as adequate teachers, classrooms,

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<sup>3</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

desks, books, electricity, etc. Meanwhile the Capitation Grants of Kenya Shillings One Thousand and Twenty (Kshs. 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>4</sup>

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. Further, grabbing of school land by private developers has been on the rise thus hindering children's right to play.<sup>5</sup>

## **Recommendations**

### **The State should:**

- a) Enforce 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.
- b) Ensure that Free Primary and Secondary Education funds cater for the extra school levies being charged by schools.
- c) Through the Treasury 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.
- d) Ensure that there are adequate incentives for teachers working in ASAL areas, particularly for female teachers as a retention mechanism.
- e) 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.
- f) 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.
- g) 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.
- h) 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.
- i) Incorporate the right to play as a critical approach to Early Childhood Development Programs.
- j) 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 secondary schools.

## **Article 24: Right to Health**

The commencement of free healthcare for children aged less than 5 years has contributed towards reduced child mortality rates.<sup>6</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. 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

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<sup>4</sup> Education Sector Report 2013/14-2015/16 Medium Term Expenditure Framework, October 2012

<sup>5</sup> The Standard January 30th 2015

<sup>6</sup> <http://data.worldbank.org/indicator/SH.DYN.MORT> accessed on 27/03/2014

items such as gloves, cotton wool and water. There have also been reported cases of alleged child trafficking at the said Pumwani Maternity Hospital where parents of new born children are shown dead fetuses while their alive children are taken away by the health workers in that institution.

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.

The devolution of county health services through the County Government Act, 2011 without clear guidelines undermines the delivery of quality healthcare given to children and the general public at large. The Health Bill, 2012, which was meant to make provisions for regulating the health sector, is yet to be enacted. Further the 2014/2015 budget only allocates 4.2% of the national budget to provision of healthcare services.<sup>7</sup> This significantly falls below the State's commitment under the Abuja declaration to allocate Fifteen percent (15%) of the entire national budget to healthcare services.

According to the regional cancer registry at Kenya Medical Research Institute (KEMRI), about Eighty percent (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 which is very expensive. Effective cancer treatment requires that all the 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**

### **The State should**

- a) 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.
- b) 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.
- c) Fully investigate the alleged cases of child trafficking at the Pumwani Maternity Hospital.
- d) Develop 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.
- e) Equip hospitals with the capacity to make early diagnosis of cancer and enforce the Kenya National Cancer Control Strategy 2011-2016.
- f) Enact and operationalize the Health Act, 2012 and also increase the allocation to health services to a minimum of Fifteen percent (15%) of the entire budget on the subsequent budgets-to be in line with the commitments made under the Abuja Declaration.

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<sup>7</sup> ibid