

# Child Labour and the Violation of Child Rights: A Case Study of Kenya

By  
**Thomas Ngui Mweu**

*A Research dissertation submitted in partial fulfillment for the  
Award of Bachelor of Law*

**April 2013**

## TABLE OF CONTENTS

<b>TABLE OF CONTENTS</b> .....	i
Acknowledgements .....	v
Dedication .....	vi
ABSTRACT .....	vii
LIST OF CONVENTIONS.....	viii
Abbreviations and Acronyms.....	ix
 <b>CHAPTER ONE</b> .....	 10
1.0 Introduction.....	10
1.1 Background.....	11
1.2 Statement of The Problem.....	12
1.3 Objectives of the Study.....	13
1.3.1 General objective of the study .....	13
1.3.2 Specific objectives.....	13
1.5 Scope of the Study .....	14
1.6 Significance of the Study.....	14
1.7 Research Questions. ....	14
1.8 Literature Review .....	15
1.9 Methodology.....	17
1.9.1 Research design.....	17
1.9.2 Sample selection & size .....	17
1.10 Data collection methods.....	18
10.3 Library research.....	18
10.4. Data analysis.....	18
11 Definition of Terms .....	18
 <b>CHAPTER TWO</b> .....	 22
<b>CHARACTERISTICS OF CHILD LABOUR AND THE FORMS OF CHILD LABOUR IN KENYA</b> .....	 22
2.0 Introduction.....	22

2.1 Characteristics of child labour .....	23
2.2 Forms of Child Labor in Kenya .....	23
2.2.1. Child Soldiers.....	25
2.2.2 Child Slavery.....	26
2.2.3 Child Trafficking.....	27
2.2.4 Commercial Sexual Exploitation .....	27
2.2.5 Domestic Child Servants .....	28
2.2.6 Informal and cross-border trade .....	28
2.2.7 Agricultural plantations .....	28
2.2.8 Street Children .....	29
2.2.9 Industrial sector.....	29
2.2.10Fishing .....	29
2.3.0 Causes of child Labour .....	30
2.3.1 Poverty.....	30
2.3.2 The impact of the deadly HIV/AIDS pandemic. ....	31
2.3.3 Insecurity caused by insurgency or guerilla .....	31
2.3.4 Orphan hood.....	31
2.3.5 Culture/Traditions/Attitude of adults& the community.....	32
2.3.6 Food scarcity.....	32
2.3.7 Harsh weather.....	33
2.3.8 Peer pressure.....	33
2.3.9 Bad/poor parenting styles.....	33
2.3.10 Unbalanced conditions.....	33
2.3.11 Gender imbalances.....	34
2.4 Legal and Institutional frame work against Child Labor .....	34
CHAPTER THREE.....	37
INITIATIVES TO COMBAT CHILD LABOUR .....	37
3.0 Introduction .....	37
3.1 Legal Framework.....	37
3.1.1 International treaties.....	38
3.1.1.1 ILO Convention 138 Minimum Age of Admission to Employment (1973).....	38
3.1.1.2 ILO Convention 182 Worst forms of Child Labour .....	38
3.1.1.3 United Nations Convention on the Rights of the Child (CRC) 1989 .....	38
3.1.1.4. The UN the Coalition to Stop the Use of Child Soldiers recommends that the Security Council members shoukT <sup>9</sup> ; .....	39
3.1. 2. National legislation .....	39
3.1.2.1 The Constitution of the Republic of Kenya.....	39
3.1.2.2 The Children Act 2000 .....	39

3.1.2.3. Local Government Act.....	40
3.1.2.4 The Employment Act .....	40
3.1.2.5 The Penal Code Act.....	40
3.2 Policies and Programmes.....	40
3.2.1 National Programme to Eliminate Child Labour.....	40
 CHAPTER FOUR .....	 50
RECOMMENDATIONS .....	50
BIBLIOGRAPHY.....	60

## Declaration

The work I have submitted is my own effort. I certify that all the material in the Dissertation which is not my own work has been identified and acknowledged. No materials are included for which a degree has been previously conferred upon me.

Signed: Thomas Ngui Mweu

Date: *Feb 2013*

## Acknowledgements

I would like to acknowledge and thank the following people for their assistance during the production of this dissertation:

My supervisor, *Mr. T Bittok*, for his guidance through the entire process of writing this dissertation. Lecturer's professional instruction in the areas of childhood studies and education has been particularly important. I also acknowledge all tutors on the Human Rights Practice programme, with whom I had a fruitful discussion about Child Labour in Kenya in the summer of 2012.

My family members who have endured my year's absence while in Uganda. The waiting had been unbearable.

Kampala International University - for granting me the opportunity to join the campus. The entire class of 2009 – 2013 Bachelor of Law.

Thank you to the faculty and staff of the Faculty of Law. Your support and encouragement were instrumental to my being where I am now. You all supported and encourage me to apply and upon my admission supported my study.

Thanks to my family - especially my mother - who made many sacrifices and supported my desire and decision to undertake Undergraduate studies. My sister Lydia Mutete and my brother Dennis Muoki, Glory and Loveness, had to do without me most of the time. To them I say thank you; your support has meant so much.

## **DEDICATION**

I dedicate this work to my late Dad, Boniface Mweu Muoki, who passed away.

Rest in Eternal Peace!

## ABSTRACT

The study attempts to determine the extent to which child labour constitutes a violation of child rights. The international documents, especially the CRC, depart from the universal conception of childhood, making children all over the world the same and deserving similar treatment, more so claiming their rights. Using the case of child workers in Kenya, it examines the notion of childhood which forms the basis to any child rights claims. Employing the cultural politics of childhood, the essay argues that childhood on which child rights are founded is a contested notion. Children are valued differently in all societies across the world.

Additionally, the thesis argues that education proposed as a panacea for child labour is also a contested field as its aims and values vary across societies. The western education system may not be the ideal for the lives of children working on tea and tobacco estates. Thus, the basis on which child rights are based, and the proposition of schooling as solution remain problematic in the abolition of child rights. The thesis concludes by recommending the capability approach which provides an alternative to the understanding and protection human rights, children's rights included. In the capability approach, the end (*substantive opportunities*) must be achieved freely (*freedom of processes*) through the most efficient and available means of sustaining economic life, security and welfare of people. The capability approach treats human rights and education from a holistic perspective.

**Key words:** *child, child labour, child work, child rights, CRC, poverty, childhood, cultural politics of childhood, values, education, capability approach.*

**Author:** Thomas Ngui Mweu .....

**Supervisor:** Mr. T Bittok.....



## **LIST OF CONVENTIONS**

1. ILO Convention 138 Minimum Age of admission to Employment
2. ILO Convention 182 Worst forms of Child Labour
3. United Nations Convention on the Rights of the Child (CRC) 1989
4. The 1989 UN convention on the Rights of the child
5. African Charter on Human & Peoples rights
6. Universal Declaration of Human Rights
7. European Convention on Human Rights
8. The bill of Rights

## **Abbreviations and Acronyms**

ACRWC: African Charter on the Rights and Welfare of the Child

AFCHPR: African Court on Human and Peoples' Rights

AU: African Union

CRC: Convention on the Rights of the Child

ECAM: Employers Consultative Association of Kenya

GOM: Government of Kenya

ICESCR: International Convention on Economic, Social and Cultural Rights

ILO: International Labour Organisation

ILO C138: International Labour Organisation Convention Number 138

ILO C182: International Labour Organisation Convention Number 182

IPEC: International Programme on the Elimination of Child Labour

IYC: International Year of the Child

KHRC: Kenya Human Rights Commission

NGO: Non-Governmental Organisation

OAU: Organisation of African Unity

UN: The United Nations UNICEF: United Nations Children's Fund

## CHAPTER ONE

### 1.0 Introduction

This research proposal is about assessing the law relating to child labour in Kenya & its effectiveness. This chapter will present background to the study, statement of the problem, general objective of the study, specific objectives of the study, research questions, hypothesis & justifications for the study

Child labour is work that threatens the health, safety, physical growth and moral development.

Child labour includes use of dangerous tools, long hours of work, heavy workloads and tasks, exposure to toxic chemicals, cruelty, sexual abuse and exploitation of children with work when they are too young for little pay or payment in kind and under hazardous conditions.

**Kenya Constitution**, defines a child as a person under 16 years of age, and states that children have the right to be protected from social and economic exploitation .The Constitution further states that children should not be employed in work that is likely to be hazardous or work that would otherwise endanger their health, their physical, mental, spiritual, Years, and prohibits the employment of children that may be harmful to this health, education moral or social development or that would interfere with their education.

Equally, **The Children's Statutes No.6 of 1996** defines a child as a person below the age of 18 years, and prohibits the employment of mental, physical or moral development.

**The Employment Act** makes it unlawful to employ a child below 12 years of age, except for light work as prescribed by the Minister of Labour by statutory order, and equally, The Employment Regulation prohibits children under 18 from employment in dangerous and hazardous jobs.

**The Local Government Act** also devolves nearly all central government responsibilities to district and local councils, bringing decision making on children's affairs, including

education and health, to local communities.

Under **Section 129 Penal Code**, any person who attempts unlawful sexual intercourse with a girl under the age 18 is liable to imprisonment, and rape of a girl under the age of 18 is an offense punishable by imprisonment with or without death sentence.

### **1.1 Background**

Kenya Constitution defines a child as a person under 16 years of age, and states that children have the right to be protected from social and economic exploitation. The Constitution further states that children should not be employed in work that is "likely to be hazardous," or work that would otherwise endanger their health, their physical, mental, spiritual, moral, or social development, or that would interfere with their education. Equally, The Children's Statute No. 6 of 1996 defines a child as a person below the age of 18 years, and prohibits the employment of children that may be harmful to his or her health, education, mental, physical or moral development.

The Kenya Government reported that some of the worst forms of child labor in the country include heavy domestic work; commercial sex and sexual slavery; involvement in military operations; smuggling of merchandise across borders; and the work of children living on the streets- Children working as domestic servants frequently work long hours, are denied food, endure physical and sexual abuse, and are isolated from family and friends<sup>1</sup>

Despite the prevalence and the many dangers associated with child labour, the phenomenon has received the attention of researchers, academicians and policy makers only recently, and not until International Labour Organization (ILO) estimates showed a large and increasing number of working children worldwide<sup>2</sup>.

Child labour is common, widespread and starts at an early age in Uganda. In 2008, the International Labor Organization (ILO) estimated that 44.4 percent of children between the

---

<sup>1</sup> Kenyas Report Child Labour

<sup>2</sup> World Development Indicators. 2006



ages of 10 and 14 in Kenya were working. The Kenya Government estimates that 3.3 million children between the ages of 10 and 17 were working, of these children, 49 percent were girls and 51 percent were boys.

It is now recognized that in order to combat child labour effectively, policies should be grounded in an informed understanding of its causes, roles and implications. Therefore, we can't help but ask ourselves questions like,

1.1.1 Why are there many children involved in labour

1.1.2 Are the laws against child labor effective?

1.1.3 What should be done to combat child labour.

## **1.2 Statement of The Problem**

The problem under study is the law relating to child labour & its effectiveness. There are different legal instruments against child labour but the study intends to show how effective they are in addressing the problem of child labour.

Child labour is most prevalent in Kenya Northern region, pastoral communities, districts devastated by HIV/AIDS, agricultural plantations, mining areas, urban centers and border towns. There are an estimated 1.7 million orphaned children, resulting from civil unrest, internal displacement of persons and HIV/AIDS. An estimated one million children living in Kenya have lost their mother or both parents top AIDS orphaned children are likely to become heads of household responsible for caring for younger siblings or live on the streets.

Insecurity in some districts in Kenya has resulted into the existence of large internally displaced people migrating to other districts. The experience of children who have been ghastly to be described to be described in words. Children experience torture and worse of all they are forced to carry guns and ammunitions for the rebels and themselves to use in combat when confronted by the advancing Kenya government armed forces.

Poverty has escalated child labour in Kenya. Many parents can't afford to provide for the needs of the children and as a result children are sent in trading centers to hawk

essential items and vegetables in order to get some money for survival of their families. Abject poverty with all its characteristics of malnutrition, disease, illiteracy, squalid surrounding low life expectancy and high infant mortality rate are some of the harsh conditions that force these disadvantaged children to resort to child labour as a way of survival.

There are some other reasons which have equally led to child labour like orphanhood which has forced children to assume responsibilities at younger ages, food scarcity has equally led to work as domestic workers for survival, some children are forced to abandon their homes because of the harsh weather conditions caused by drought. However, there are some children who have abandoned their homes due to peer pressure and urban excitement. Bad parenting where parents neglect their children. There's discrimination against one gender the girl child which has led to girls taking over roles of mothers at young ages, like caring for siblings and even in some instances forced marriages.

### **1.3 Objectives of the Study**

#### **1.3.1 General objective of the study**

The major objective of the study is to assess how effective the existing laws are in combating child labour.

#### **1.3.2 Specific objectives**

1.3.2.1. To assess why child labour has persisted for so long

1.3.2.2. To create more awareness to the government, parents, guardians, Individuals & other agencies that there is an increasing number of child labour & should be checked

1.3.2.3. To identify the major hindrances towards the observance of the law relating to child labour.

1.3.2.4. To identify the weaknesses of the law relating to child labour.

### **1.4 Hypothesis**

The study will test the following hypothesis.

The prevalence of child labour in Kenya is due to lack of legal mechanisms to address the problem.

### **1.5 Scope of the Study**

Child labour is a widespread problem in Kenya. According to government figures 1.76 million of Kenya 5-17 years olds are involved in some kind of work Many have to miss school to go out and work instead, while many are putting themselves in harm's way.

The study was largely based in Kenya northern region, pastoral communities, districts of Isiolo, Mandera where there are many children involved in the worst forms of child labor in the country like heavy domestic work; commercial sex and sexual slavery; involvement in military operations; smuggling of merchandise across borders; and the work of children living on the streets.

Equally, they study will cover Kenya, where children "are employed in garages and metal workshops they are exposes to hazardous products like paint, petroleum, acid and asbestos. Children work on the streets, commercial sex workers scavengers. The study will look at the various regional and International instruments relating to child labour & their effectiveness& what can possibly be done to make them more effective.

### **1.6 Significance of the Study**

This study will enlighten on the ineffectiveness of the law in protecting children from the evil of child labour & the possible recommendations to curb it.

The study will address the weakness of the available law against child labour & how best the policy makers can adjust & amend the laws to curb child labour.

This study will expose the causes & possible solutions to child labour

This study will aid the lawmakers & implementers, to come up with new strategies & laws to improve on the living conditions of children & fight child labour

The study will also help on the available literature for the future use by any agency, or person.

### **1.7 Research Questions.**

The research questions to be answered include;

1.7.1 .What are the legal instruments relating to child labour?

1.7.2 .How effective are the laws relating to child labour?

1.7.4 .What should be done to make the laws relating to child labour more effective?

## **1.8 Literature Review**

Despite the prevalence and the many dangers associated with child labour, the phenomenon has received the attention of researchers, academicians and policy makers only recently, and not until International Labour Organization (ILO) estimates showed a large and increasing number of working children worldwide.

**Kenya Psycho-social Needs Assessment by Tom Barton**, it is now recognized that in order to combat child labour effectively, policies should be grounded in an informed understanding of its causes, roles and implications. His study uses data from the Kenya National Household .Surveys to explore the extent, determinants and forms of child labour in a poor but growing economy. The study highlights the extent, characteristics and determinants of child labour in Kenya and their evolution per the decade. Using probit and tobit models, we estimate the determinants of child labour for the individual child worker. The results indicate that child labour is still common, widespread and starts at an early age in Kenya Northern

**Unearthed Grace-Stories from Northern Kenya**. As captives of the Alshabaab, children from the bush meet hatred and revenge if they dared to face their families again. After living a day upon day of brutality, children view themselves as criminals, unfit for the society. It seems to be a choice between two evil fates-risking deaths during escape or retaliation from their community.

**Comprehensive strategy for the new Millennium by the European Union**, Today approximately 40 million people are infected with HIV. More than 24 million people including almost 15 million children have already died since beginning of epidemic, leaving a legacy of more than 15 million orphans which leaves them as heads of families hence child labour<sup>3</sup>.

---

<sup>3</sup> UNAIDS Epidemic update 2002



According to **Child Soldier Global Report 2008**, Since the early 2001, Kenya northern region has been continuously disrupted by armed conflict, particularly in the districts of Isiolo, Mandera, Trukana, Wajir and across the border in Somalia. Estimated 14,000 children have been abducted & the abducted children are often trafficked into Somalia Sudan, Tanzania who are used as hostages & sex slaves.

According to **United Nations Childrens fund (2008)**, reported that in Sub Saharan Africa, the AIDS/HIV epidemic has deepened poverty & exacerbated myriad deprivation. This has necessitated children to look for employment opportunities hence leading to child labour.

According to, **World Bank, World Development Indicators**, 44.4 percent of children between the ages of 10 and 14 in Kenya were working. The Kenya Government estimates that 3.3 million children between the ages of 10 and 17 were working, of these children, 49 percent were girls and 51 percent were boys.

According to **The Employers Effort in Eliminating Child Labour**, it was noted that predominant factor behind child labor is poverty, particularly in rural areas where more than 90 percent of Kenya population lives. Children work in both subsistence and commercial farming. Children performed a variety of tasks, including harvesting tea and tobacco (25 percent); picking coffee beans (23 percent); weeding (14 percent); slashing (9 percent); spraying (9 percent); and sorting tobacco (5 percent).

**Children in Domestic Service** provides that children working as domestic servants frequently work long hours, are denied food, endure physical and sexual abuse, and are isolated from family and friends Reports show that some of the worst forms of child labor in the country include heavy domestic work; commercial sex and sexual slavery; involvement in military operations; smuggling of merchandise across borders; and the work of children living on the streets.

In urban areas, children are employed in garages and metal workshops & are often exposed

to hazardous products such as paint, petroleum, battery acid, and asbestos. They are also involved in the commercial sex industry, particularly in Nairobi and border towns. Child street workers are exposed to crime, drug abuse & suffer from malnutrition and hunger as per **The Electronic correspondence from Sophie Waithera.**

According to **Kenya National Programme of Action for Children September, 1992** noted that substantial proportion of children are subjected to a variety of forms of abuse and neglect by parents, relatives, guardians. Forms of abuse include child battery abandonment, sexual and mental abuse. These children cannot live a normal life.

**Africa's Orphaned Generations (2003)**, asserted that Sub-Saharan Africa already has a higher proportion of children working than any other region, 29% of children aged 5\_ 14 years old who are economically active.

The rest of the material was acquired through numerous articles dealing with child labour. The Internet was a major source of these articles.

## **1.9 Methodology**

In this chapter, approaches that will be used to obtain data from the field are presented. It will further define and describe the research methods used in data collection. Appropriateness and justification for each method and techniques to be used will be presented. Hardships that are anticipated to be encountered in researching will be highlighted.

### **1.9.1 Research design**

Both qualitative & quantitative methods of data collection will be used.

### **1.9.2 Sample selection & size**

A total number of 100 participants as respondents will be used selected and used during the study. This will be done randomly and will majorly be focused on people who have been victims of child labour.



## **1.10 Data collection methods**

### **10.3 Library research**

This will be used through reading of written information from libraries and other sources that will be having relevant materials about child labour and will help in obtaining relevant information. Text books, News papers, journals, & any other relevant material that may be deemed necessary will be used for the sake of producing quality and exhaustive research. This method is great in that it helps in that ideas from previous scholars will be put to a test in relation to the present scholars.

### **10.4. Data analysis**

At this stage, the data will be analyzed & processed using both qualitative & quantitative research designs. It will be descriptive and analytical in nature trying to explain the information obtained from the field. This will be done while reflecting on the actual facts and realities found out during the data collection process. Each finding will thereafter be classified, analyzed and interpreted according to objective of the research.

My study is descriptive, analytical and prescriptive. It is descriptive because it defines the current laws relating to child labour, it is analytical as it examines the law relating to child labour & its effectiveness. It is also prescriptive as it gives recommendations in making the law relating to child labour effective.

The internet also has a lot of information from sites dealing with child labour. Primary documents to be used, the Organization of African Unity Charter on the Rights of the Child, International Labor Organization (ILO) Convention No. 182, The International Organization on elimination of child labour Conventions many others.. Equally, there are also domestic legislation relating to child labour like, The Constitution of Kenya, The Employment Act, The Children Act, The Penal Code, The Local Government Act

### **11 Definition of Terms**

**1.1 Child.** Article 1 of the Convention on the Rights of the Child, also defines a child as every man below the age of eighteen years. The Children Act, Chapter 59, Section 2 defines a child as a person below the age of 18 years.

**1.11.2 Labour** is work agreed upon by two or more parties where one (employer) employs the other (employee) for the benefit of both parties. In labour, there's a contract written or unwritten and services rendered by the employee are paid according to agreed terms. Child labour is one of the main sources of child abuse, exploitation and a potential threat to the health, safety, moral and psychological development of children.

**1.11.3 Child labour.** Child labour is work that threatens the health, safety, physical growth and moral development of children. Child labour includes use of dangerous tools, long hours of work, heavy workloads and tasks, exposure to toxic chemicals, cruelty, sexual abuse and exploitation of children with work when they are too young for little pay or payment in kind and under hazardous conditions. The worst form of child labour include slavery, such as sale and trafficking of children, debt bondage and serfdom, use of children in armed conflict, using children in procurement and offering them/for prostitution and pornography, using children in illicit activities and work that is likely to harm their health, safety and morality.

**1.11.4 Worst forms of child labour:** Article 3 (a) of Convention 182 according to which the term "worst forms of child labour" comprises (a) all forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labour, including forced or compulsory recruitment of children for use in armed conflict".

**1.11.5 Child work** According to the ILO Convention number 138, child work refers to activities done by children within their families such as washing, fetching firewood, cooking and fanning, which all are done under close observation and supervision of their families (parents /guardians). Children at their own will, at home normally perform these activities. The work must be light and interesting to the child and is aimed at mentoring the child for the future roles they are expected to do in maturity.

**1.11.6 Child Soldier:** A child associated with an armed force or armed group refers to any person below 18 years of age who is or who has been recruited or used by an armed force or armed group in any capacity, including but not limited to children, boys and girls, used as fighters, cooks, porters, messengers, spies or for sexual purposes. It does not only refer to a child who is taking or has taken a direct part in hostilities. (Paris Principles and guidelines on children associated with armed forces or armed groups. In this Report, child soldier will also be used with a similar meaning as it is the commonly used term.

**1.11.7 Trafficking in persons:** shall mean recruitment, transportation, transfer, harboring or receipts of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power of the position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of the person having control over another person, for the purpose of exploitation<sup>4</sup>.

**1.11.8 Exploitation'** shall include, at a minimum, the exploitation of prostitution of others or other forms sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs including organized crime units, drugs;"

**1.11.9 Hazardous work:** by children is an activity or occupation that, by its nature or type, has or leads to adverse effects on the child's safety, health (physical and mental) and moral development. Hazard could also derive from excessive workload, physical conditions of work, and or work intensity in terms of the duration or hours of work even when the activity or the occupation is known to be non-hazardous or "safe."

**1.11.10 Human rights:** Inherent claims or entitlements of an individual that protect each and every person from abuse and deprivation that would prevent them from attaining their full potentials. For example, equality, non-discrimination, participation and inclusion. Citizens are right-holders and states are duty bearers.

---

<sup>4</sup> (Palermo protocol, 2000)

**1.11.12 Vulnerability:** The condition of being at risk of becoming poor, or other misfortunes such as violence, and natural hazards exposure to risk, sensitivity to shock and level of resilience). Vulnerability of children in general has been described as multidimensional as it reflects not only relative susceptibility but also defenselessness against economic and her shocks not only linked to HIV but to Child Labour as well.



## **CHAPTER TWO**

### **CHARACTERISTICS OF CHILD LABOUR AND THE FORMS OF CHILD LABOUR IN KENYA**

#### **2.0 Introduction**

This chapter presents the characteristics of child labour and the worst forms of child labour in Kenya. Child labour refers to work, which by its nature and the circumstances under which it is performed jeopardizes the health, safety and morals of a child. Children working when too young, working for long hours, working in conditions that are harmful to health, physical growth, and mental development, and taking too much responsibility fall in the category of child labour.

Despite the prevalence and the many dangers associated with child labour, the phenomenon has received the attention of researchers, academicians and policy makers only recently, and not until International Labour Organization (ILO) estimates showed a large and increasing number of working children worldwide. It is now recognized that in order to combat child labour effectively, policies should be grounded in an informed understanding of its causes, roles and implications

According to the 2006 UNICEF survey, 34 percent of Kenyan children are engaged in work. In contrast in 1998, the International Labor Organization (ILO) estimated that 44.4 percent of children between the ages of 10 and 14 in Kenya were working. According to the 1991 Population Census and the 1992/93 Kenya Integrated Household Survey, 23 percent of children between the ages of 10 and 14 work in various activities .And according to the Kenya 2002 Census Report, about 88 percent of Kenyans live in rural areas and only 12 percent in urban zones. As admitted by the government itself, "children represent a substantial part of the labour force in agriculture." A family's survival often relies on children's contribution to their meager budget

As per the a above data, its noteworthy that child labour has reduced. However, it should be noted that although it is known that the commercial exploitation of children occurs, little available data exist that reflect the extent of the problem

### **2.1 Characteristics of child labour**

Children working when too young, working for long hours, working in conditions that are harmful to health, physical growth, and mental development, and taking too much responsibility fall in the category of child labour. These conditions constitute the main sources of child abuse and exploitation.

When determining the forms of child labour, we are guided by the International Labour Standards of the International Labour Organization (ILO).

The study has defined child labour based on the age of the child, nature of work and conditions in which that work is carried out. Child labour is work for the children aged 5 to 17 years that jeopardizes the health, safety and morals of the child.

The ILO convention of H 999 number 182, defined the forms of child labour which need immediate attention to include;

- All forms of slavery or practices similar to slavery such as, trafficking of children.
- Forced and compulsory labour, including recruitment and use of children in armed conflict.
- Use or offering a child for prostitution.
- Use or offering a child for illicit activities.
- Work which exposes a child to physical, psychological or sexual abuse.
- Work with dangerous equipment and machinery, tools and manual handling of heavy loads.
- Work under difficult conditions such as working for long hours, during night, and work where the child is confined to the premises of the employer.

There are equally other forms of child labour which include the following activities; hawking, crushing stones, brick making, workshop attendant, luggage carrier, and guarding.

### **2.2 Forms of Child Labor in Kenya**

The Kenya Government reports that some of the worst forms of child labor in the country include heavy domestic work; commercial sex and sexual slavery; involvement in military operations; smuggling of merchandise across borders; and the work of



children living on the streets. Children working as domestic servants frequently work long hours, are denied food, endure physical and sexual abuse, and are isolated from family and friends.

In urban areas, children are employed in garages and metal workshops. Children working in garages and workshops often are exposed to hazardous products such as paint, petroleum, battery acid, and asbestos.

Children working on the streets sell small items, beg, wash cars, and scavenge. They are also involved in the commercial sex industry, particularly in Nairobi and border towns. Child street workers are exposed to crime and drug abuse. Many suffer from malnutrition and hunger; some sniff fuel to get high. A study conducted in 1993 in 10 districts identified 3,827 street children, 14 percent of whom were living and working on the street full time. In 1999, a study carried out by a national NGO estimated the number of street children in Nairobi alone at 5,000, of whom 1,000 live full time on the streets.

Since the early 1980s, Kenya northern region has been continuously disrupted by armed conflict, particularly in the districts of Mandera, Isiolo, Trukana, Wajir, and Somalia border, and across the border in southern Sudan. Rebels are associated with the Alshabaab. Some estimate that as many as 14,000 children have been abducted by rebel groups. Abducted children are often trafficked into Somalia and forced into situations of armed conflict, Somalia, and Uganda. They are used as human shields or hostages and are sometimes coerced into sexual activity. The United Nations Children's Fund (UNICEF) estimates that more than 5,000 children abducted by the Alshabaab since 2001 are still unaccounted for.

Children work in both subsistence and commercial farming. Children fetch water over long distances; handle heavy loads; and are exposed to dust, pesticides and herbicides. According to a study conducted by the Federation of Kenya Employers of 115 enterprises involved in tea, coffee, sugar, and tobacco production, children participate in the labor force of almost 80 percent of the employers. In the areas examined by the study, children performed a variety of tasks, including harvesting tea and tobacco (25%);

picking coffee beans (23%); weeding (14%); slashing (9 percent); spraying (9%); and sorting tobacco (5%).

#### 2.2.1. Child Soldiers

The recruitment of children under age 15 for military purposes is a war crime under international law. Nevertheless, children remain vulnerable to this grotesque abuse in countries suffering longstanding civil conflict. There has been large-scale reporting on abduction and recruitment of in and out of school children into rebel ranks to replenish fighting forces, maintain logistical bases and carry looted goods and ammunitions in Northern Kenya for the Alshabaab rebel force.

According to UNICEF, 2006, between 25,000-30,000 children, including 500 girls are believed to have been abducted since 1990. The numbers of children abducted, indeed fluctuate according to the military situation. Similarly, a report by international agencies indicates that of the abducted children over 8,000 are still unaccounted for and only 23,000 have returned and 60 cases of abducted children were reported to have been killed in combat.

Girls comprise 20%-30% of the child soldiers recruited and abducted in Northern Kenya. Those who are abducted by the Alshabaab face varied threats, often behind the frontlines of the conflict; some are forced to fight in forces or to assist in the abduction of other children. The youngest girls are often used as servants, many are forced to serve as "wives" of Alshabaab commanders, known to have many wives", while other officers might have four, where they face the threat of rape, sexually transmitted diseases, and unwanted pregnancies. Rape is used to both instill terror in the civilian population, and exert control over those girls abducted and forced to serve as child soldiers for the Alshabaab. Girls are treated as a commodity by the Alshabaab soldiers the commanders are rewarded for fighting and wives serve as a mark of power and prestige. If these "wives" are lucky enough to be released by the Alshabaab, or manage to escape, they face significant cultural prejudice from their communities, particularly if they became pregnant and return with children & they end up in prostitution so that they may support the children.

In recent years, child soldiers have become a well-publicized topic of concern in the international arena. In reality, the effect of armed conflict on children is a complex and far-reaching problem and children perform many tasks besides serving in combat. The focus on children serving in combat positions overshadows the experiences of many children who are abducted or recruited into armed forces and then forced into serving as domestic and sexual slaves; in many cases, girl soldiers experience these other roles in addition to serving in armed combat. International laws which prohibit the use of child soldiers do not address these experiences. Additionally, many programs designed to prevent the recruitment of child soldiers and aid in their rehabilitation offer insufficient aid to girls. International efforts to condemn the use of child soldiers must explicitly address this failure.

### **2.2.2 Child Slavery**

Alshabaab abducted civilians for training as guerrillas; most victims were children and young adults, whom the Alshabaab terrorized into virtual slavery as guards, labourers, soldiers. Latest reports suggest that the Alshabaab has turned to selling abducted children in return for arms. It has been reported that Bin Laden is the main buyer of these children. Radio intercepts indicate that Bin Laden pays one Kalashnikov assault rifle for every child he buys for use as forced labour on marijuana farms in Sudan<sup>21</sup>. Children from Kenya are sold as slaves in Sudan UNICEF has drawn up a list of 2,600 children abducted in border district of Somalia between 1996-1998, according to the testimony of their parents. Most children are aged 12 to 15 when they are seized in their villages in northern Kenya, near Somalia, and taken to be fighters or sexual slaves.

Abducted children are tied together and forced to carry heavy loads of looted goods. All of the children receive rudimentary military training and most are armed and forced to fight. In effect, children abducted by the Alshabaab become slaves: their labour, their bodies and their lives are all at the disposal of their rebel captors.

### **2.2.3 Child Trafficking**

There is strong evidence that trafficking of children exists in Kenya. Whereas cross-border trafficking of children is believed to be growing in Kenya, the domestic trafficking of children is a much bigger problem. Child trafficking includes recruiting, harboring and moving a child from his/her home for commercial sexual exploitation or to work in other forms of exploitative labour. In Northern Kenya, the Alshabaab Force, has abducted between 25,000 -30,000 boys and girls and recruited them into its ranks as sex slaves, cooks, combatants and other forms of servitude. Other abducted children have ended up in Sudan, Middle East and beyond as sex slaves<sup>25</sup>. The armed conflict has also resulted in displacement of families into surrounding districts and in economically active centers where the children have ended up in the WFCL as the only option for their survival and that of their parents.

### **2.2.4 Commercial Sexual Exploitation**

Commercial Sexual Exploitation of Children (CSEC) as one of the worst forms of child labour is considered to be one of the hidden, complex and corrosive form of child labour where trafficking of children has been identified be persistent. The problem of CSEC is on the increase. A study conducted by ILO on CSEC in 2004 in Kenya covering child prostitution, pornography and trafficking for WFCL revealed that 12,000 children mainly girls between ages 14-17 years were affected in the country . The ratio of girls to boys was nine girls to one boy; though the number of the boys involved is reported to be on the increase. Similar reports conducted by Ministry of Finance, Women and Youth services (WAYS) and Platform for Labour Action (PLA) show that many children are still trafficked and conscripted into prostitution and many cases go unreported. A retrospective study on violence against girls in Uganda conducted by UYDEL in 2006, established that 10% of 500 girls in Nairobi slums have been trafficked for sexual purposes and domestic work. UNICEF has drawn up a list of 2,600 children abducted in northern district between 2001 2011, according to the testimony of their parents. Most children are aged 12 to 15 when they are seized in their villages in northern Kenya, near Somalia, and taken to be fighters or sexual slaves. In a report that was recently released by Women and Youth Services 2003, findings showed that the majority of children involved in commercial sex in truck driver stopover towns are between 8-18 years old. Most of the girls are school



dropouts who dropped out due to lack of school fees or orphan hood. Children between the ages of 13 and 18, mainly street girls, former domestic workers who have left abusive work environments, and students at hostels, are targeted for commercial sexual exploitation.

#### **2.2.5 Domestic Child Servants**

In Kenya, the use of children majority are between 13-16 years for domestic work is a widespread practice<sup>28</sup>. Child domestic labour is considered to be a hidden problem, largely beyond the scope of conventional labour market survey methods, whereby employers mainly from urban areas recruit children from rural areas through family, friends and contacts. In other circumstances parents send children to work in homes of well to do relatives under the guise of being provided with help such as feeding, shelter, clothing, education, etc. Children perform domestic tasks in the home of a third party or employer that are exploitative.<sup>29</sup>

#### **2.2.6 Informal and cross-border trade**

Child trafficking has also been thriving in this sector as well. Children continue to be involved in informal trade and other illicit activities including hawking, working in markets and on road sides, smuggling and drug trafficking working as conduits as a way of benefiting adults. Many children are brought to the border towns of Somalia, Sudan, and Tanzania and in the cities of Nairobi to smuggle goods across borders and do illicit activities including watching over merchandise, hawking and this is very common and regularly reported in the local press . Traders prefer to deal with children because they find it cheaper and safer to employ them instead of adults who are considered crafty and are easily noticed by the Kenya Revenue Authority official and Police

#### **2.2.7 Agricultural plantations**

This is another activity that has perpetuates child trafficking and exploitation. Globally, child labour is twice as high in rural areas as in urban areas. In Kenya where majority of the population (75% out of 27 million)<sup>21</sup> lives in rural areas, 11 million people are engaged in agriculture and of these 30% are children<sup>22</sup>. Children involved in commercial agriculture often begin working at the age of four. Similarly, in Kenya, commercial agriculture is mainly practiced in the rural areas where 91% of children work on tea, rice, coffee, sugarcane and tobacco estates. Most trafficked children are employed by the

small enterprises and out growers and their tasks range from cutting sugar canes, picking tea, coffee, beans and tobacco, slashing and spraying chemicals, in other words working in hazardous condition. This practice of exploitation of children on the out-grower gardens have mainly affected trafficked children from the war zone in northern Kenya and the populous districts of east and southern Kenya.

#### **2.2.8 Street Children**

Government estimates put the number of children living on the streets to over 10,000; the majority of these are males. A study done in 11 out of the 48 districts in Kenya confirmed that 3,827 of the children are street Children. 14% are living and working on the street full-time and 86% are on the street part-time. Nairobi, the capital city is has the highest number. Friends of Children Association (FOCA) estimated that 5,000 children beg, wash cars, scavenge, work in the commercial sex industry, and sell small items on the streets of Nairobi and street children in nature are child labourers. Many suffer from malnutrition and hunger; some sniff fuel to get high. They are also involved in the commercial sex industry. Many of these have come to Nairobi with the support of a peer or an adult who may be a relative or a person known to the family who wanted them to sell their merchandise or look after their homes but the children later ran away.

#### **2.2.9 Industrial sector**

In urban areas, children are employed in industries, garages and metal workshops. Children working in garages and workshops often are exposed to hazardous products such as paint, petroleum, battery acid, and asbestos and at the end of the day they are paid meager money

#### **2.2.10 Fishing**

Fishing has become a lucrative activity in the economy of Kenya. Nearly, 750,000 of people around Lake Victoria benefit from fish-related activities. Fishing contributes close to 15% of Kenya (GDP) and 20% of the total exports. According to a study conducted by ILO-IPEC<sup>3j23</sup>, 80% of child workers employed in the fishing industry in Kenya were employed in their locality, implying that 20% of them were trafficked from other areas. Among child workers in the fishing sector, aged 15-17 years, 83% were not related to their employers while those aged 10-14 years, 63% of the male children and

77% of the females were related to their employers. This shows that children are internally and^ deliberately trafficked in fishing communities.

### **2.3.0 Causes of child Labour**

According to the 2006 UNICEF survey, 34 percent of Kenya children are engaged in work due to a number of reasons. Several factors have been documented to be pushing children into trafficking. The major factors identified were HIV/AIDS, Poverty, conflict and wars among others as explained below.

#### **2.3.1 Poverty.**

Poverty is the main cause of child labour but it is a symptom as well. Poor parents send their children to work for reasons of economic expediency, the consequent denial of education trapping another generation of the household within poverty. According to the Kenya's 2002 Census Report, about 70 percent of Kenyans live in rural areas and only 12 percent in urban zones. As admitted by the government itself, "children represent a substantial part of the labour force in agriculture." A family's survival often relies on children's contribution to their meager budget. Some parents have adopted the habit of sending their children to work in order to raise money for their daily bread due to low levels of income, children have become a common public nuisance in urban and rural trading centre's trying to work under hazardous conditions like selling food items for payment in kind or cheap payment. Abject poverty with all its characteristics of malnutrition, disease, illiteracy, squalid surroundings, low life expectancy and high infant mortality rate are some of the harsh conditions that force these disadvantaged children to resort to child labour as a way of survival. The hunting grounds for child traffickers are invariably areas of the most extreme poverty where families have exhausted all other strategies for survival. The report revealed that desperate Borana parents sell their children, especially girls in Trukana at weekly cattle markets like to raise money to maintain the remaining members of their families. Brokers usually pay between 2 Lb dollars and 16 US dollars for the children and sell them for about 160 dollars.<sup>34</sup>

### **2.3.2 The impact of the deadly HIV/AIDS pandemic. .**

It is estimated by UNAIDS that since the beginning of the HIV/AIDS epidemic, 1.7 million children in Kenya have lost their mother or both parents to AIDS. Death of both parents almost automatically means that dropping out of school and engaging in child labour soon follows. HIV/AIDS pandemic has drastically contributed to the increasing numbers of children that not only have to tend to their younger siblings but also become breadwinners themselves.. This has resulted into the emergence of many child headed house-holds. According to a recent sample survey in some districts in Kenya, it is estimated that there are approximately 42,000 child headed families in Kenya. Some of these children are rejected by their relatives and they resort to manual jobs like riding bicycles to transport people around rural trading centers and urban areas at a tender age of about 15 years or less depending on the need. Children are forced to engage in petty trade of selling vegetables, oranges, boiled eggs, sugarcane and other essential commodities in order to raise money for their school fees. This leads to stunted growth among children, loss of education, skills and future leaders

### **2.3.3 Insecurity caused by insurgency or guerilla .**

Since the early 1980s, Kenya northern region has been continuously disrupted by armed conflict, particularly in the districts of Wajir, Mandera, Moyale, Trukana, and across the border in Somalia. Rebels are associated with the Alshabaab militia, Saboat land defense force active in limited areas in southwest Kenya. Some estimate that as many as 14,000 children have been abducted by rebel groups. Abducted children are often trafficked into southern Sudan and forced into situations of armed conflict in Sudan, the Democratic Republic of Congo, and Uganda. They are used as human shields or hostages and are sometimes coerced into sexual activity. The United Nations Children's Fund (UNICEF) estimates that more than 5,000 children abducted by the LRA since 1987 are still unaccounted for<sup>36</sup>.

### **2.3.4 Orphan hood**

The ever-increasing burden of orphan hood in the country is among other factors contributing to the occurrence of child labour .Due to orphan hood, economic setbacks will therefore regenerate the supply side of the child labour equation Orphans resort to offering



child labour as a means of survival in the harsh environment they live in after the loss of their parents. This is another disaster that is causing loss of market for skilled manpower because children provide a ready source of manual labour force

#### **2.3.5 Culture/Traditions/Attitude of adults& the community.**

The social norm, as highlighted by many individuals the is that a child is born to help parents secure their household; anything else comes as secondary..

*Most parents (Adults) prefer to over burden children with hard labour tasks like digging, thrashing and winnowing rice in the rice fields, scaring birds in rice fields in humid weather conditions, fetching water from wells from distant places and doing all the domestic chores at home like cooking food and hewing wood. Kenya children are forced by their parents or traffickers to beg in towns for food and money. Recent studies reveal that boys and girls from the nomadic tribe of the Samburu in North-eastern Kenya shun going to school in preference for cattle 'keeping and preparation for marriage respectively. Equally, according to culture, girl children are in demand for domestic service, the invisible nature of which adds to their vulnerability to abuse .Absence from official statistics is also the fate of those girls kept away from school in order to work for their own families in the home or on the land. Like, Trukana children resent formal education because of cultural influence from their elders. In some instances, Cultural pressures can undermine perception of the long term value of education, especially for girl children and in the process forcing them into child labour.*

This supply of child labour is matched with the demand of employers for a cheap and flexible workforce. This attribute appeals especially to small-scale enterprises, including those whose owners exploit their own family members.

There is perceived value in the particular skills that children's dexterity can offer; for example in weaving or in tasks involving crop seeds. The unquestioning naivety of youngsters fits the purpose of child traffickers whose ventures are usually criminal.

#### **2.3.6 Food scarcity.**

Food scarcity due to draught caused by too much sunshine leading to bad weather patterns and poor crop yields or harvest. This usually affects the nomadic tribes like the

Maasai, Samburu. According to recent media reports, young under-aged Borana girls have been ferried to trading centre's in Teso region to be sold cheaply as domestic maids.

#### **2.3.7 Harsh weather.**

These children are forced to abandon their homes because of the harsh weather conditions caused by droughts and the rampant poverty in the districts of Kisumu, Mombasa and Nakuru, it was observed that brokers at the weekly cattle markets in the neighboring district sold children and they extended their child trafficking activities in other districts in Kenya and across the border in Kenya, especially in the town of Eldoret.

#### **2.3.8 Peer pressure.**

Delinquency of children which causes them to be beyond parental control, care and guidance is a factor worth mentioning. Most of these children who are now classified as street children have abandoned their homes due to peer pressure and urban excitement. Peer group influence, which leads to child exploitation in the form of prostitution, gambling, selling of labour

#### **2.3.9 Bad/poor parenting styles.**

Bad parenting may drive children into child labour. Parents who neglect their children cause them to become juveniles and practice child labour as a way of trying to be independent from their hostile parents. Recent studies reveal that boys and girls from the nomadic tribe of the shun going to school in preference for cattle keeping and preparation for marriage respectively. The intrinsic forces/ pressures within children that desire independence from parents/guardians forcing them to desire to be free from adult care and protection is a factor worth noting.

#### **2.3.10 Unbalanced conditions.**

Unbalanced conditions in the rural areas and attraction to urban centers (push-and-pull factors are increasing the trend of urbanization in Uganda, which lures children into migration to urban centers in hope of enjoying city lifestyles. This leads to tendencies of their being exposed to child labour.

#### 2.3.11 Gender imbalances.

Discrimination against one gender (gender child taking over the mother role of caring for the other siblings prematurely e.g. cooking for the entire family of many people, taking up household chores which a mother/guardian or aunt would have done

#### 2.4 Legal and Institutional frame work against Child Labor

Much as child labour is still prevalent in Kenya, there are many legal and Institutional instruments both National and International that outlaw child labour as highlighted below

**The constitution of the Republic of Kenya**, Article 34 defines a child as a person less than 18 years of age, and states that children have the right to be protected from social and economic exploitation.

Equally, the **Children's ACT**, cap 59 provides for the care, protection and maintenance of children and defines a child as one below 16 years.

**The Employment Decree No. 4 of 1975**, makes it unlawful to employ a child below 12 years of age, except for light work as prescribed by the Minister of Labor by statutory order. The decree does not allow those less than 16 years from work at night or underground.

**The Employment Regulation of 1977** prohibits children under 18 from employment in dangerous and hazardous jobs

**The Children's Statute No. 6 of 1996** defines a child as a person below the age of 16 years, and prohibits the employment of children that, may be harmful to his or her health, education, mental, physical or moral development. The statute makes it the responsibility of all Local Councils from village to district to safeguard and promote child welfare, and provides for redress.

**The Local Government Act of 1997** also devolves nearly all central government responsibilities to district and local councils, bringing decision-making on children's affairs, including education and health, to local communities



Protection of the child from labor and all hazards connected to it falls under the mandate of the Ministry of Gender, Labour and Social Development (MGLSD), in the Department of Labor Employment and Industrial Relations. Other ministries with responsibilities include the Ministry of Education and Sports, Ministry of Health, Ministry of Local Government, and Ministry of Internal Affairs. Although it is known that the commercial exploitation of children occurs, little available data exist that reflect the extent of the problem.

Section **125 of the Penal Code** prohibits individuals from soliciting females for prostitution. Violation of this code is punishable by up to seven years imprisonment. Owning or occupying a premise where a girl under age 18 is sexually exploited is a felony, and offenders are subject to five years imprisonment. Under Article 123, any person who attempts unlawful sexual intercourse with a girl under the age 18 is liable to imprisonment for 18 years, and rape of a girl under the age of 18 is an offense punishable by imprisonment with or without a death sentence.

The Government of Kenya has ratified the Organization of African Unity Charter on the Rights of the Child (1991). Kenya ratified International Labor Organization (ILO) Convention No. 182 on the Worst Forms of Child Labor on June 21, 2001.

**The ILO Convention 182 on Worst Forms of Child Labour** prohibits use of children in hostile situations, trafficking & slavery

.The National Orphans and Vulnerable Children Act

.The National Policy on Elimination of Child Labour

## **Conclusion**

Despite the prevalence and the many dangers associated with child labour, the phenomenon has received the attention of researchers, academicians and policy makers only recently, and not until International Labour Organization..(ILO) estimates showed a large and increasing number of working children worldwide. It is now recognized

that in order to combat child labour effectively, policies should be grounded in an informed understanding of its causes, roles and implications. This chapter explored the characteristics, extent, determinants and forms of child labour in Kenya and their evolution over the decade. It's indicated that child labour is still common, widespread and starts at an early age in Kenya, although it has reduced significantly over the years. Education and formal employment of the household head significantly decrease the probability that a child will work. Household welfare is another indicator of child labour, as poor households are more likely to have working children. The likelihood of child labour increases with the age of the child. While the law is in place, child labour is still so prevalent in Kenya & the rights of the children are still grossly violated. Its therefore imminent to look at the initiatives that have been undertaken to solve child labour as per the next chapter

## **CHAPTER THREE**

### **INITIATIVES TO COMBAT CHILD LABOUR**

#### **3.0 Introduction**

In Kenya, as in any other African country, child labour is widespread especially in homes (i.e. domestic service), agriculture (both traditional and commercial), fishing, commercial sex, informal enterprises (i.e. the urban informal sector and street activities), armed forces and armed conflict; and other activities or sectors such as construction, mining and quarrying. There is hardly any statistical information as to the magnitude of child labour in terms of how many children are involved in the activities that have been identified above, but a series of surveys and studies carried out by the Kenya Bureau of Statistics, and other partners over the period documented some broad indications of child labour. Among others, the Kenya Demographic and Health Survey 2000/01 formed the basis for the first ever Report on Child Labour in Kenya 2003. The findings of the report provided some broad information on the situation of child labour and have been useful in stimulating debate on the issue of child labour, and designing of demonstrable strategies to tackle the problem. However, that there is more that needs to be known about child labour especially its worst forms and to obtain a deeper understanding of the scale of the problem in terms of incidence, nature, magnitude dynamics, distribution, injuries, hazards and variety of conditions in which the victims work.

**The Global Report on Child Labour 2006** from the International Labour Organization (ILO) showed encouraging evidence that the total number of child labourers in the world is on the decline. Governments, employers, workers and other groups in society have been successfully saying "no" to child labour as they endeavor to provide more positive alternatives for the world's disadvantaged children.

On country level, the Government of Kenya, with other partners in areas of legislation, policy and practical action, has taken a number of initiatives.

#### **3.1 Legal Framework**

There are many areas in which Kenya has made measurable strides towards improvement



of the development and welfare of children, including protection of children from child labour. They include signing of international treaties, formulating sectoral policies, legislation and programmes.

### **3.1.1 International treaties**

Kenya has acceded on several international treaties which bind it to translate into the municipal law, these include:

#### **3.1.1.1 ILO Convention 138 Minimum Age of Admission to Employment (1973)**

Kenya ratified the ILO Convention 138 on the Minimum Age for Admission to Employment No. 138 (1973) in 2002. This Convention provides for the development of a comprehensive national Child Labour Policy. Government has declared the minimum age for admission to employment to be set at the age 14 years. The government of Kenya ratified ILO Convention 138 on March 25, 2003.

#### **3.1.1.2 ILO Convention 182 Worst forms of Child Labour**

The Convention defines the worst forms of child labour as practices similar to slavery such as sale and trafficking of children, child prostitution, debt bondage and recruitment of children in armed conflict. Prior to the ratification of the ILO Conventions on child labour, government launched a national programme on elimination of child labour. In its first phase, the programme targeted the most exploitative and abusive forms of child labour including children working in plantations, in the informal sector, domestic service, and children involved in CSEC and other hazardous work. The Government of Kenya ratified ILO Convention 182 on June 21, 2001.

#### **3.1.1.3 United Nations Convention on the Rights of the Child (CRC) 1989**

This commits Kenya to promote children's rights to survival, development, protection and participation. Articles in the CRC that have a bearing on trafficking of children include: Sexual exploitation, Sale, trafficking and abduction, Torture and deprivation of Liberty, Armed conflicts, Rehabilitation and Care.

Subscription to the above treaties indicates that Kenya has joined the rest of the world in committing itself to the progressive elimination of child labour. The challenge remains in fully integrating the treaties into the national legislation and programmes.

#### **3.1.1.4. The UN the Coalition to Stop the Use of Child Soldiers recommends that the Security Council members should;**

- Make sure there is an annual updated list of all parties to armed conflict that recruit or use child soldiers;
- Follow up on this list by asking those using child soldiers to provide - within 90 days - information on steps they are taking to end recruitment and use of child soldiers;
- Designate a UN representative to start talks with those using child soldiers, and to assist them in developing action plans with them to end such practices;
- Verify whether armed groups and forces are implementing such action plans;
- End weapons flows, particularly small arms, to those recruiting and using children; and
- Use other means to enforce an international ban on child soldiering, such as travel restrictions on leaders using children in their armies, banning them from attending International events and organizations, ending military assistance to their governments or groups, and restricting the flow of financial resources to the parties concerned.

#### **3.1. 2. National legislation**

Some of the International treaties have been translated into the several legal binding documents as illustrated below:

##### **3.1.2.1 The Constitution of the Republic of Kenya**

This is the supreme law, Constitution of Kenya protects children under the age of 16 years from social or economic exploitation. It emphasizes that children shall not be employed in or required to perform work that is likely to be hazardous or interfere with their education, be harmful to their health or physical, mental and social development.

##### **3.1.2.2 The Children Act 2000**

This law gives legal status to many of the commitments in the CRC and follows the CRC principle of "The best interests of the child". It defines a child as any person below the age of 18 years. It establishes the rights of children such as: the right to live with parents have custody, protection from discrimination, violence, abuse and neglect and prohibits the employment of children or their engagement in any activity that may be



harmful to their lives, health, and education, mental, physical or moral development".

#### **3.1.2.3. Local Government Act**

The Act provides for a Secretary responsible for Children's Affairs at all local levels and gives them mandate to plan and implement programmes at local government level.

#### **3.1.2.4 The Employment Act**

Section 55 sub section (1) on unsuitable employment; states that no young person may be employed in any employment which is injurious to health, dangerous or otherwise unsuitable. However, section 51, which specifies employment of children states that: "no person may employ a person of or under the apparent age of twelve years except on such light work as the Minister may, from time to time, by statutory order, prescribe.

#### **3.1.2.5 The Penal Code Act**

Penal Code makes trafficking in women and children and having sex with a girl less than 18 years unlawful. Abduction of children is also prohibited under section 126 and 239, procurement under section 131, pornography under section 166 and concealment under section 246.

### **3.2 Policies and Programmes**

#### **3.2.1 National Programme to Eliminate Child Labour**

In collaboration with ILO-IPEC and with funding from USDOL, Kenya launched a National Program to Eliminate Child Labor in 1999. The program contributes to the progressive elimination of exploitive child labor through prevention, withdrawal, rehabilitation and provision of alternatives to working children. The projects focus on sensitization, advocacy, media awareness, and the formation of district groups aimed at addressing children's issues. Sectors receiving particular attention include commercial agriculture, construction, and fishing. In the informal sector, rehabilitation services are available to street children, commercial sex workers, domestic workers, and children involved in cross-border smuggling and drug trafficking.<sup>40</sup>

**3.2.2 National Programme of Action for Children.** Inspired by the UN Summit on Children, the Kenya National Programme of Action on Children (KNPAC) was developed and launched in 1993 to provide a framework for all actors to protect the rights of children in areas of child survival, protection, development and participation.

**3.2.3 National Child Labour Policy.** This was recently passed at end of October 2006, by the government of Kenya. The policy has defined child labour and the worst forms that need to be given urgent action, including children engaged in CSEC. The specific objectives of the policy are: firstly to integrate child labour concerns into the national, district and community programmes and plans. Secondly, establish a legislative and institutional framework to initiate, coordinate, monitor and evaluate child labour programmes. Lastly, to stimulate collective and concerted efforts to **eliminate child labour at all levels.**

**3.2.4 Poverty Eradication Action Plan (PEAP).** This focuses on the rural poor with the objective of increasing income generating activities and lifting the standards of living of the poor. The PEAP on the other hand does not specifically address the worst forms of child labour.

Since 1997 when Kenya developed its first Poverty Eradication Action Plan (PEAP), considerable progress has been made in reducing poverty, increasing household incomes, and sustaining a respectable economic growth rate (approximately 6% per annum), controlling inflation, etc. In the proposed five-year National Development Plan (NDP) whose theme is "Growth, Employment and Prosperity for AH" key commitments have been made, **including;**

- Uplifting household standards of living
- Enhancing the quality and availability of gainful employment
- Improving social, economic and trade infrastructure nationwide
- Developing efficient, innovative and internationally competitive industries

<sup>1</sup> Interview with Dr. Regina Muhoro, ILO-IPEC coordinator, by U.S. Department of Labor official, August 14, 2000.

- Developing and optimally exploiting the national resource base and ensure environmental and economic sustainability
- Strengthening good governance and improve human security

These commitments are consistent with, and their realization will even be much supported by, the articulation and implementation of a comprehensive Social Protection strategy and programmes to address issues of risk and vulnerability. Further, they reinforce the need to balance growth, employment, prosperity and poverty eradication with increased capacity of chronically poor and vulnerable groups to resist shocks and avoid sliding into deeper poverty.<sup>41</sup>

**3.2.5 The National Council of Children (NCC).** This was established to guide and direct policies and actions in social services to address children issues. NCC lacks the capacity, both human and financial resources, to track and monitor child trafficking and child welfare in general.

**3.2.6 OVC policy and strategic framework.** The recently developed national Orphans and other Vulnerable Children Policy is an integral part of the PEAP and SD1P. The goal of the policy is to mitigate the impact of orphan hood and other causes of the vulnerability of children in Kenya and improve the fulfillment of their rights. The policy priority areas are: Child protection, care and support, social-economic security psychosocial support, food security and nutrition, conflict resolution and peace building, legal support and capacity enhancement.

**3.2.7 Universal Primary Education (UPE).** Efforts to expand education facilities under Universal Primary Education (UPE) by government have provided some preventive measures against child labour especially to the vulnerable children. Enrolments in primary education have grown from 2.9 million in 1997 to 5.7 million children in 1999. By 2000 UNICEF estimated the figure to have. Specifically: risen to 7.2 million. This has been beneficial to the girl child especially those from poorer households. However retention of children in schools is challenged by poor proximity to schools, gender factors, and poverty in homes, HIV/AIDS pandemic and conflicts.

**3.2.8. Policies** to improve the quality of education have been launched as part of the Education Strategic Investment Plan. They include, classroom construction programmes, curriculum development and the Plan of Action for the Girls' Education. In education sector, NGOs have strongly complemented government efforts. Provisions include scholastic materials, uniforms and school fees. Some donors sponsor children and others conduct spiritual guidance and sensitize them on children rights, child labour, life skills and HIV/AIDS. The World Food Programme provides things like food (lunch at school), assist in school quality improvement support to vocational skills training, literacy classes, hygiene and sanitation, provision of water and resettlement kits. Complementary programmes focus on disadvantaged groups such as street children, for example COPE68 provides basic education to out of school children aged 10-16 who are unable to attend formal schools, such as nomadic groups and internally displaced children. ABEK69 is a non-formal education program adapted to the daily routines of the children of the nomadic Maasai ethnic group.

**3.2.9 A National Primary School-Feeding Programme.** Anecdotal evidence and evidence from research reveals a high correlation between provision of lunch and increase in school enrollment, and conversely poor performance is to a large extent attributed to lack of school meals. In North and Eastern Kenya where a school feeding program was introduced in 1,360 schools, already 12% of the children enrolled in UPE are benefiting from this program<sup>42</sup>. Similarly, in Samburu, provision of free food (lunch) at school under the Alternative Basic Education for Maasai (ABEM) has attracted about 42,250 learners in Samburu, of which 1,427 have since crossed to formal education system.

**3.2.10 ILO-IPEC Regional Programme.** Kenya is also one of five countries participating in the ILO-IPEC regional program Combating Child Labor in the Commercial Agricultural Sector, supported by funding from USDOL. The project aims to increase the capacity of all stakeholders to identify and eliminate hazardous child labor on tea and coffee plantations. The project will withdraw and rehabilitate children

working in hazardous conditions in commercial agriculture and provide their families with viable alternatives. The ILO-IPEC is currently supporting the Government of Uganda to expedite the finalization of the National Child Labour Policy. Similarly the ILO-IPEC is working with stakeholders to support the review of the Children's Act to make it stronger on child labour matters. Similarly government and other stakeholders can play a vital role to support community based social protection mechanisms to address poverty among HIV/AIDS affected families. With these strides, as ILO-IPEC predicts, the worst forms of child labour will be history in Uganda in ten years and Kenya will be on course to achieving the Millennium Development Goals (MDGs). "Together, we can eliminate child labour

### **3.3 Consumer Campaigns against Child Labour**

Failure to deal with child labour is an emotive issue in rich countries. Consumers are sensitive to the track record of globalization in driving labour costs and standards to the bottom. Disclosure of the use of child labour represents a major public relations disaster for both multinational companies and the host countries concerned. In Uganda, according to a study conducted by the Federation of Kenya Employers of 115 enterprises involved in tea, coffee, sugar, and tobacco production, children participate in the labor force of almost 80 percent of the employers. In the areas examined by the study, children performed a variety of tasks, including harvesting tea and tobacco (25 percent); picking coffee beans (23 percent); weeding (14 percent); slashing (9 percent); spraying (9 percent); and sorting tobacco (5 percent)<sup>46</sup>. In the commercial agriculture sector 80% of the employers in this sector have children as part of their labour force

Attempts to certify goods as "child labour free" have struggled to establish credibility. Manufacturers in developing countries often subcontract labour-intensive segments of the product to backstreet producers which are very difficult to audit. One of few successful certification schemes is the Good Weave label supervised by Rugmark International, protecting the carpet industry.

Governments too are becoming anxious to respond to public opinion by introducing conditions relating to child labour in free trade agreements. Both the US and EU seek to include clauses imposing labour standards or requirements to ratify child rights treaties.

Many campaigners are uncomfortable with these linkages, preferring that child labour be addressed by explicit domestic laws rather than the small print of international trade.

Other measures being implemented by the government in collaboration with other partners include: the establishment of a multi-sectoral National Steering Committee on Child Labour; the creation of a child labour unit in the Ministry of Gender, Labour and Social Development; awareness raising activities and provision of direct support services to the child labourers by the social partners and NGOs. Beyond the measures already in place or being implemented, government has identified remaining gaps and challenges and it is to these that the Draft National Child Labour Policy is intended to respond.

HIV/AIDS pandemic has drastically contributed to the increasing numbers of children that not only have to tend to their younger siblings but also become breadwinners themselves.. This has resulted into gross child labour To address this, The ILO's International Programme on the Elimination of Child Labour (IPEC) along with its Programme on HIV/AIDS and the World of Work (ILO/AIDS) are working together to ensure that the links between HIV/AIDS and child labour are well understood and addressed in an integrated way. IPEC benefits from the work of ILO/AIDS in collaboration with governments, employers' organizations, workers' organizations and other social partners around the world to promote prevention, to combat HIV-related discrimination and to mitigate the social and economic impact. Community HIV/AIDS CHAI project which offers support to individuals and households with HIV/AIDS in form of cash, training, Equally, TASO provides psycho- social support and material support to PLWA

### **3.4 The impact of child labour**

Child labour causes unending horrible impacts on the children, community and the Nation as indicated below:

#### **3.4.1 Child soldiers**

These children have experienced abduction, mutilations, rape, killings, torture, sexual slavery, enslavement and other forms of sexual violence. Children narrated that in addition to caning at the time of initiation, Alshabaab commanders and senior soldiers beat them often severely, for minor infractions committed while under their orders. The Alshabaab commanders also beat children to encourage them to march faster; including



those wounded in the fighting, and sometimes kills those that can't keep up. Child abductees are forced to beat and sometimes kill civilians in looting operations, participate in the abduction of new children, and steal from and burn houses in their home regions. Children are forced to witness and participate in the killings of other children, usually those who attempt to escape but get captured.

The practice of using the children to collectively kill fosters guilt and fear among them, and sends a powerful message to the children of their potential fate if they attempt to escape. In addition, the brutal tactics used to control the children make their personal rehabilitation and reintegration into their home communities much more difficult.

According to ILO-IPEC 2004, many children have been physically and psychologically affected, while some have died. Many reports indicate that over 12,000 children abducted in northern Kenya by Alshabaab had been involved in fighting and many were killed in combat, suffering the fate of soft target and other brutal murders. Unfortunate children end up with their body parts chopped off by the rebels in a maniac expression of military adversaries<sup>49</sup>. Under abduction, children experience harsh working conditions such as carrying supplies, cook/clean, lot supplies, act as spies, bodyguards and participate in combat; meaning that they undergo military training and indoctrination to accept the cause of fighting. Majority of females are involved in carrying supplies, cooking and serving as sex slaves/wives. Mistreatment is a common occurrence characterized by working for long hours, walking long distances, working without food and carrying heavy loads/tools.

### **3.4.2. Night Commuting**

Due to fear of abduction and eventual trafficking, children in war northern zone usually migrate in the evening to towns where they expect security under the protection of the army. The problem of night commuters, a byproduct of child abduction has escalated. It comes with the problem of rape and sexual exploitation, HIV/AIDS infection, defilement against the girls by adult men and sometimes government soldiers. Commuting back and forth affects the children, school performance and leads to school dropouts escalating unemployment and paving the way for future trafficking.

### **3.4.3. Sexual exploitation**

Studies on trafficked children for the purpose of sexual exploitation indicate that a variety of long-term emotional, behavioral, social and sexual problems result. Children involved in CSEC experience physical harm i.e. rape, beating and assault by client partners and HIV/AIDS. Also noted among the victims of CSEC are tendencies of substance abuse, adolescent prostitution, and running away from home, confusion, and sexual dysfunction and suicide attempts. Other studies confirmed that the consequences of sexual abuse on such children have included, running away, conduct disorders, delinquency, aggressiveness promiscuity and inappropriate sexual behavior

### **3.4.4. Health hazards.**

In the fishing industry, ILO-1PEC (2005) cited a number of health hazards including drowning, promiscuity and vulgar language risks of armed robbery and working during chilly nights on the lake. In the agriculture sector, children face work-related injuries, back pain, exposure to chemicals due to lack of protective gear, and working early in the morning in very cold conditions. The children also risk sexual harassments, defilement, STDs early pregnancy and other ailments. The activity in which most children working in agriculture are involved is harvesting. Children in the agricultural sector are more involved in harvesting and work the longest hours (9 hours) on tea plantation, though some children working on sugar plantations work 10 hours a day. Children work on agricultural plantations for long hours without specific rest periods, especially on rice plantations where they are employed to chase away birds. Diseases such as tetanus, malaria and poisonous snakes threaten their lives.

### **3.4.5. Child domestic labourers**

Studies reveal that children are involved in child domestic labour perform a range of physical tasks including washing, cooking, fetching water, gate keeping, looking after animals, taking and collecting children from school laundry work, collecting firewood and cultivating gardens among others. Girls involved in domestic work face sexual harassment and abuse and are susceptible to HIV/AIDS Infections. They are also easy targets for physical, verbal and psychological abuse by female employers/wives. They also lack

sanitary amenities due to their meager pay. Platform for Labour Action

#### **3.4.6. Early marriage, slavery and servitude**

Child marriage is a violation of human rights representing the most prevalent form of child sexual abuse and exploitation. Its harmful consequences include separation from family at an early age, denial of freedom to interact with peers and participate in community activities, and it can jeopardize the opportunity for education. Reports have indicated that trafficked children face the problem of early marriage and servitude to their so-called 'suitors'. For example, abducted young girls from Northern Kenya are taken to the rebel camps in the Somalia, where they live as sex slaves and rebel wives. UNICEF notes that child marriage may result in bonded labour or enslavement, commercial sexual exploitation and violence against the victims. Child victims of trafficking and early marriage cannot abstain from sex or insist on a condom use. They are often exposed to reproductive health risks such as premature pregnancy, STDs and HIV/AIDS. Kenya has the highest teenage pregnancy at 31 % remaining among the highest in Sub-Saharan Africa

#### **Conclusion**

Despite the government having signed many international conventions putting in place several policies and enacted legal documents; The Kenya government's commitment to address trafficking of children is not clearly visible. Government department who would enforce these legal documents are confronted with limited information, under- funding and weak coordination all of which are compounded by the hidden nature of the problem. NGOs have the capacity and staff to deliver in a professional way, undertake regular reviews of the assistance. Many times they promote community participation, through identification of the needy, resources and local solutions, However, NGOs programmes face many challenges; most times they are project-driven and short term in nature, depend on surplus and profits accrued by these entities and usually undertake activities for a short time. They cover smaller numbers and sometimes exclude certain areas and gender. The Government of Kenya does not fully

comply with the minimum standards for the elimination of trafficking despite the fact that it has accented to several protocols. Most interventions appear to be driven by NGOs and concentrated on child soldiering in the northern war zones. Duplication of services on child soldiers especially in the north has been noted in the literature. Interventions in Kenya have been supported largely by ILO-IPEC/USDOL. child labour has not received the appropriate attention it deserves, because data on this problem has been limited. Much as many government programmes have contributed positively to the elimination of child labour, they have left many gaps & loopholes. Much As some measures have been put in place by the Government, there's so much that still needs to be done to combat child labour as I will discuss in my next Chapter.

## **CHAPTER FOUR**

### **RECOMMENDATIONS**

Child labour harms the welfare of individual children and also slows broader national development efforts. The worst off child labourers face immediate threats to their safety and wellbeing, and therefore constitute an urgent policy priority. In relation to child labour, the situation for millions of children in Kenya is still desperate and urgent. There remain an estimated 44.4 percent of children between the ages of 10 and 14 in Kenya working in various activities.

The progressive elimination of child labour in Kenya as elsewhere requires a policy response targeting three broad groups:

- Children at risk of involvement in child labour; .
- Children already harmed by exposure to child labour; and
- Children in the worst forms of child labour requiring immediate, direct action.

Studies, as well as policy experience in Kenya and elsewhere, point to a number of general strategies for reaching these groups. Better access to schooling and other basic services, combined with mechanisms to reduce social risk, are particularly important to preventing children from entering child labour, and to stopping children already in work from moving to more hazardous forms or leaving school prematurely. Remedial schooling and other "second chance" learning opportunities is important to overcoming work-related harm to children's welfare. Better formal workplace inspection instruments, together with expanded grassroots level monitoring, are needed to guide "direct action" to remove and rehabilitate children in unconditional worst forms of child labour.

In summary, "prevention" measures are needed both to reduce the flow of vulnerable children into child labour and to stop children already in work from moving to worse forms or leaving school, while "second chance" measures are needed to avoid large numbers of children entering adulthood in a disadvantaged position, permanently harmed by early work experiences. "Direct action" is needed to identify and withdraw the children in unconditional worst forms, a group facing immediate and severe threats to survival, safety and development. The effective

implementation of both prevention and protection measures requires political commitment, reliable information, an appropriate legal and regulatory framework, functioning coordination structures, capable institutions and a mobilized society, i.e., an "enabling environment".

Many human rights instruments prohibit the involvement of children labour which might be hazardous to their health, safety, lives and growth.

Lack of harmonization between laws in relation to definition of child& age, **ILO Convention 138 Minimum Age of Admission to Employment**, declared the minimum age for admission to employment to be set at the age 14 years, while. The **Children Act 2000**, defines a child as any person below the age of 16 years. On the other hand, **The Employment Act (2005)**, Section 51, provides that "no person may employ a person of or under the apparent age of twelve years except on such light work as the Minister may, from time to time, by statutory order, prescribe. **The International Criminal Court** makes it an International crime to enlist children under 15 into the armed forces or to use them in hostilities in armed conflict whereas, **The 1989 UN Convention on The Rights of the Child**, Article 34 defines a child as a person under 16 years of age. All these statutes contravene **The Constitution of the Republic of Kenya** protects children under the age of 15 years from social or economic exploitation. There is no uniform age of a child as per the above statutes. This creates a very big loophole in the system as different child abusers use that inconsistency to beat the system. Therefore; the statutes should be harmonized many legislations which are passed **The Employment Act (2005)** which limits the age of employment, are shrugged by private business owners. In private business sector, the curbing of child labour can be included in codes-of-conduct, labeling programmes as in the case of carpet manufacturers, importers and retailers (using labels to indicate that they were not made by children or were made by a company that supports children's programs). Industry-wide arrangements such as that of Bangladesh garment manufacturers where, under agreement with the ILO and UNICEF, underage workers were removed from their jobs, put into schools and paid stipends amounting to part of the money they had been earning in their jobs has laws **Convention 182** is particularly weak on the special vulnerability of girl children. This can be countered in part by extra-territorial laws that permit prosecution of citizens who sexually abuse children in another country. For example nationals from many European countries and the US can now be charged at home for engaging in child prostitute in Kenya although almost Kenya prohibiting the employment of children below a



certain age, like **The Employment Act (2005), Section 51**, provides that "no person may employ a person of or under the apparent age of twelve years legislation too often proves ineffective. New laws periodically introduced in Kenya are shrugged off by hardened business owners and disillusioned campaigners alike. Hence there's need for there to be checks and policies to make sure that the new laws passed are implemented by fining and imprisoning those trying to defeat the intention of the law.

Existing Policies and laws have not been disseminated among the population like **The Children Act 2000** establishes the rights of children such as: the right to live with parents have custody, protection from discrimination, violence, abuse and neglect and prohibits the employment of children or their engagement in any activity that may be harmful to their lives, health, and education, mental, physical or moral development and puts a responsibility on each member of the community. There should be dissemination and sensitization of the population to create awareness and vigilance in fighting against child labour.

Labour legislation consistent with international child labour standards is necessary both as a statement of national intent and as legal and regulatory framework for efforts against child labour. As child labour is an issue that cuts across sectors and areas of ministerial responsibility, progress against it requires that institutional roles are clearly delineated, and that effective coordination and information-sharing structures are in place.

Most laws have remained on paper and not implemented such as **National Policy for Older Persons**, which has never been approved. For instance, the **Employment Regulation of 1977** prohibits children under 18 from employment in dangerous and hazardous jobs, equally the **ILO Convention 182 on Worst Forms of Child Labour** prohibits use of children in hostile situations, trafficking & slavery. But much as the plight of children in war torn zones has been exposed, little has been done to save the situation. The laws should be made stringent and give for provision on how to deal with the perpetrators of child labour both at the International and National levels.

Kenya lacks a human trafficking law, the code that exists is scattered in the penal code. There are gaps and inconsistencies in the law, have been compounded with laxity in enforcement.

LAW-Kenya supported by ABA initiated a human trafficking bill which should be largely supported by ILO.

Regulatory frameworks need to define minimum standards of care for former child labourers and other vulnerable children, and to specify the respective roles of the various State and private actors in meeting these care needs. The key recommendation is to take steps to enforce the laws intended to address the problem of child labour. This can best be achieved by bridging the existing gap in the perceptions of the lawmakers, the enforcers and families and employers regarding child labour.

The government needs to, sign a declaration by all government members and civil servants stating that they do not employ a child in their household to send a clear moral signal to the public.

The Government should equally, narrow the gap between the existing legislation on child rights and the prevailing practices. Review and harmonize both local and international laws to fix a minimum age applicable to all employment. Review Employment laws to include specific provisions on Child Labour to for ease of implementation. Disseminate laws of children and child welfare issues and review the National Development Planning Framework to strengthen monitoring of Early Childhood Development and Special Needs Education Child registration is a huge challenge and without documents to prove birth registration, children and families often cannot access health, education and other social services, and States cannot plan poverty alleviation and social service programmes without accurate estimates of annual births. Therefore, for this evil of child labour to be dealt with and combated, compulsory registration must be put in place so as to keep data of every child born and monitor their growth, wellbeing .

Much as many government programmes and policies as discussed in **Chapter 3 (3.2)** have contributed positively to the elimination of child labour, they have left many gaps & loopholes While the implemented programs have positively contributed to poverty reduction, macro-economic policy and growth, the persistent deep-seated nature of poverty have brought to the spot light the effectiveness of the interventions in effectively reducing poverty. The deduction is that the current anti-poverty interventions and interventions to reduce risk and

vulnerability have targeted and benefited the "active poor" or the "working poor" thus leaving out a large (and perhaps growing number) of the population. The impacts of having an un-reached" poor and vulnerable groups is that such groups will forever be trapped later alone sink into deeper poverty which jeopardizes government efforts in realizing the Millennium Development Goals thus the need for Social Protection to realize pro-poor growth, equitable access to and utilization of resources. Population growth represents another major challenge to poverty reduction.

HIV pandemic as illustrated in 2.3.2 is the most obstinate root causes of child labour. It exposes even more children to the hardships of child labour due to poverty, the burden of caring for family; the death of guardians, fewer teachers and discrimination. There are no quick-fix solutions to this critical problem. Ultimately, success in efforts against HIV, AIDS and child labour requires a change in behavior and attitudes. From the policy to the community level, we need to promote universal understanding of the virus, its transmission and its effects. We need to promote a change in attitudes towards women, masculinity and sex, and a better understanding of sexual violence, gender inequality and stigmatization as continuing causes of the spread of HIV. In addition, social protection for the millions of adults and children made vulnerable by HIV and AIDS is needed to ensure that lives are not thrown away nor childhoods lost. Young people are an integral part of the campaign to eliminate child labour and to put a stop to the spread of HIV. Not only do young people have a right to participate in the programmes and policies that affect them, they also bring enormous potential through their diverse energy, motivation, creativity and commitment to contribute to their communities as agents of social change.

As discussed in 2.2.1 the children soldiers in Northern Kenya is one of the worst forms of child Labour. Widespread use of child soldiers by armed forces and groups in Kenya is evidence of both violation and disregard of commitments to national, regional and international legal standards for child protection, enforceable penalties need to be worked out for use against violators. Christina Clark of the London-based Coalition to Stop the Use of Child Soldiers in Africa has suggested that communities need to learn that the practice is a crime, while the world needs to "raise the scepter of Criminal Justice" by putting warlords on trial. She believes that "A high profile case at the International Criminal Court would serve as a deterrent

to some of these child recruiters"<sup>51</sup>. Effective abolition of children's participation in armed conflict as the one in northern Kenya requires conflict resolution or termination. Whoever and whatever can help to break the military and peace negotiations stalemates will provide the key to ending one of the most intolerable forms of child labour in Kenya.

Under **Universal Primary Education**, (UPE), enrollment increased in primary schools from 3 million pupils in 1997 when the programme was first introduced to about 7.5 million in 2003 and over 7.6 million in 2005/06<sup>52</sup>, and yet about 1.3 million children aged 6 to 12 years (school going age) are still excluded from UPE and therefore from enjoyment of their right to education. High drop-out rates make the situation worse, especially in rural areas, where the majority of those who are trapped in poverty live. Close to 50% of pupils who enroll in Primary One do not complete Primary Seven in the set timeframe. According to the 2007 Primary Leaving Examination (PLE) results, only 444,019 of the 890,997 who enrolled in 2001 sat for the examinations in 2007<sup>54</sup>. This according to studies has been attributed to the failure by poor an integral part of the campaign to eliminate child labour and to put a stop to the spread of HIV. Not only do young people have a right to participate in the programmes and policies that affect them, they also bring enormous potential through their diverse energy, motivation, creativity and commitment to contribute to their communities as agents of social change.

Parents to raise/meet additional non-tuition costs/requirements related to school attendance such as provision of uniforms, scholastic materials, and examination fees, among others. Lack of lunch at schools is also documented as one of the main causes for the high drop out rates<sup>55</sup>. Other causes are attributed to low attention in prioritizing Special Needs Education (SNE) for PWDs such as training of SNE teachers. Cultural practices such as girls being given away in early marriages "in order to fetch an income in bride price" and children engaging in income generating activities and exploitative child labour also play a part. The cost implications of so many children missing out on education are quite considerable as they will be likely to fall into exploitative labour and be unable to contribute to national economic growth in the future. This is even made worse by the fact that over 50% of the Orphans and Vulnerable Children under the age of 18 years are under the care of Older Persons who often form the majority of people living in chronic poverty only further sinks families and



households into deeper poverty. Hence there is need to deal with poverty from the grass root level as UPE will remain ineffective with a high school drop out of children.

The second **Participatory Poverty Assessment (PPA II)** identified "**hunger and poor nutrition**" as the key cause of absenteeism and drop-out from school, hence exclusion from an opportunity to access education. Most pupils are unable to carry a packed lunch, and on top of this they travel long distances to attend school, especially in rural areas. Those who stay on at school forego lunch, thus learning on "empty" stomachs. This also contributes to the high school dropout rate but also to the declining nutritional status among the pupils, poor education standards and consequently to declining human capital. Such children will not be able to steer the country sustainably on the path of economic growth, employment and prosperity, and without strategic SP interventions, the children are more likely to drop out of school. Interventions in the education sector, such as through a **National School Feeding Program** will not only help the 1.3 million children to access education but will also help in uplifting educational standards, improve nutritional standards, and in turn contribute to the realization of the Education for All (EFA) goals and the MDG targets of ensuring that, by 2015, children everywhere, boys and girls alike, are able to complete a full course of primary schooling.

Even with UPE provision, there are still many communities that will continue not to benefit from existing education programmes on account of geographical and occupational dictates. For instance children in fishing and pastoral communities do not stay in school as they move from place to place in harvesting fish or grazing cattle. For cattle keeping communities like in Maasai Alternative Basic Education for Maasai (ABEK) was introduced. In the fishing communities of Trukana, however, where physical isolation of islands and the shifting nature of fishermen remains an issue the matter is far from resolved. Not surprisingly, therefore, Trukana district has persistently been named among the worst performing districts at primary level. There should be flexibility in policy making by passing by-laws to address this problem.

In the **health sector**, efforts to increase access to health services saw the abolition of user fees for health services. The contribution of this increasing access to health services notwithstanding, vulnerable groups still face a challenge of accessing basic health care services. According to the UNHS 2005/6, 13% of sick people suffer without seeking medical attention. The national household survey further revealed that about 1.4 million who fell sick did not seek medical attention, out of which 32% (nearly 450,000 people) cited costs as a hindrance to seeking medical attention. PWDs access to health services is limited by problem of the long distances to health centers. In addition due to poor enforcement on the requirements for health centers to build ramps and other mechanisms to ensure accessibility by PWDs, most health centers still do not have these accessibility mechanisms for PWDs.

**Reducing household vulnerability:** As discussed in Chapter 2 (2.3.1) poverty is the root cause of child labour, children's work frequently forms part of a household's strategy for dealing with risk, making them less vulnerable to losses of income arising from individual or collective shocks. Widespread poverty, a very limited social protection net and the impact of the HIV/AIDS crisis mean a very high degree of household vulnerability in Kenya. Reducing household vulnerability by expanding social protection is therefore a critical priority in the country.

Developing and strengthening community-based social safety mechanisms is likely to yield needed benefits to vulnerable households in the short-term. Community-based measures such as micro health insurance plans, community savings groups, and micro-credit initiatives should be promoted and expanded, especially targeting poorest and HIV/AIDS-affected households

**Adult education:** As discussed in Chapter 2 (2.3.9) bad/poor parenting styles is one of the reasons why child labour has prevailed for so long. Empirical evidence in Uganda indicating the parents' education and particularly mothers' education, has a significantly positive effect on children's time use, making it less likely that children are involved in work at a young age and more likely that they are in school. Developing and expanding efforts in promoting good parenting, functional literacy and numeracy, work-related skills training and basic education equivalency programmes are all important in this context

As discussed in chapter 2 (2.3.5) culture, traditions and attitudes of the community have a role to play in the prevalence of child labour. The influence of negative perceptions, cultural attitudes

and cultural practices is tremendous, raising public awareness should be intensified to address the perception-attitude cultural practices. This should include the sensitization of civic leaders, leaders in armed forces, agencies of law and order, private sector entrepreneurs, communities and the general populace.

## **Conclusion**

Child labour is work that threatens the health, safety, physical growth and moral development of children involved in work that deprives them the opportunity to go to school. Child labour includes use of dangerous tools, long hours of work, heavy workloads and tasks, exposure to \ toxic chemicals, cruelty, sexual abuse and exploitation of children with work when they are too young for little pay or payment in kind and under hazardous conditions. The worst form of child labour refers to slavery, such as sale and trafficking of children, debt bondage and serfdom, use of children in armed conflict, using children in procurement and offering them for prostitution and pornography, using children in illicit activities and work that is likely to harm their health, safety and morality. The notion of child labour is therefore placed on children 18 years who work on a regular and continuous basis to earn a living for themselves or on behalf of their families. They work for long hours, sometimes without wages, in conditions that forces them to prematurely lead adult lives and condemned to a cruel future.

For the effective combating of child labour in Kenya, there should be harmonizing of the International and National statutes that expressly prohibit child labour. Further, there should be harmonizing of the National legislation against child labour like The Children Act which defines a child as one below 16 while The Constitution puts the age to 18. So, there should be harmonization of the different legislations to give a uniform definition of a child& avoid perpetrators of child labour, taking advantage of the contradiction. The Government should equally, narrow the gap between the existing legislation on child rights and the prevailing practices. Review Employment laws to include specific provisions on Child Labour to for ease of implementation. Disseminate laws of children and child welfare issues and review the National Development Planning Framework to strengthen monitoring of Early Childhood Development and Special Needs Education.

Achieving sustainable reductions in child labour requires a supportive national political, legal and institutional environment. Political commitment is needed to ensure that child labour is mainstreamed into broader development plans and programmes. This may include, integrating child labour as an explicit concern in Millennium Development Goals, Education for All plans, and poverty reduction strategy plans. Without effective enforcement, government policies and programmes on paper cannot achieve much. A plan fails not necessarily because of its formulation but in most cases, because of deficiencies in its implementation. An effective push for abolition of child labour requires not only commitment, especially from political and civic society perspectives, but also resources. There is, therefore, need to significantly step up advocacy for resources for this cause at International, national and sub-national levels. This essentially requires that the lobbying and advocacy for the children's cause be brought to the political and corporate agenda of the controllers of resource allocation political leaders, legislators, other policy-makers or advisors at all levels.

Children are the future and so, they deserve protection from the State, society and culture. There isn't much publicity of child labour, therefore its an evil which has been silenced yet its very prevalent. The existing legal mechanisms, statutes which tend to protect children's rights aren't respected and given priority. Much some measures have been put in place by the Government, there's so much that still needs to be done to illuminate child labour as discussed above.



## BIBLIOGRAPHY

- I. The Employers' Effort in Eliminating Child Labour within the Formal Agricultural Sector in Kenya: A Study Conducted by the Federation of Kenya Employers, April 1999, International Labor Organization, vii.
- II. Childline Kenya, *Baseline Survey on Child abuse and Child Protection in Kenya*, Consultancy Report, 2008
- III. World Vision International, *Child Protection Assessment in the Context of HIV& AIDS: An Assessment conducted in Eastern and Southern Africa*, 2007.
- IV. Omondi Awino, *Protecting Children from Abuse Challenges Associated with the Implementation of the Children Act Cap 586 of the Laws of Kenya*, Unpublished MA project paper, University of Nairobi 2007
- V. Onyango, P, *A Study of Commercial Sex Exploitation of Children in Kenya*, ANPPCAN Regional Office, 2004.
- VI. Imbuye Joy, *Sexual Harassment of Girl Students in Secondary Schools in the City of Nairobi: Its effects on their Performance*, Unpublished MA project paper, University of Nairobi 2008.
- VII. UNICEF, Extent and Effect of sex tourism and Sexual Exploitation of Children on the Kenyan Coast, A study conducted by UNICEF and the Government of Kenya, 2006
- VIII. Alila O. Patrick Njoka Murimi John *Child Labour IDS USN ILO/IPEC* (2009) Nairobi Kenya.
- IX. ANPPCAN and Save the Children Finland © *Violence Against Children in Kenya Situational Analyses Report (2010)*.
- X. Jones, C. Sarah. 2006 (pre-publication edition). The Extent and Effect of Sex Tourism and Sexual Exploitation of Children on the Kenyan Coast. Nairobi: UNICEF.
- XI. Basu, K. and Z. Tzannatos (2003), "The Global Child Labor Problem: What Do We Know and What can We Do?" *The World Bank Economic Review*, Vol. 17, No. 2, 147 – 173. Berges, S. (2007), "Why the Capability Approach is Justified," *Journal of Applied Philosophy*, vol.24, No.1, 16 – 25.
- XII. Bhalotra, S. (2003), "Child Labour in Africa", *OECD Social Employment and Migration Working Papers*, No. 4, OECD Publishing.
- XIII. Breen, C. (2007), "When is a Child not a Child? Child Soldiers in International Law," *Human Rights Review*, January – March, 71-103.