

## A Critical Analysis of the Implementation of Children's Rights in Kenya.

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### ABSTRACT

*This paper analysis the role of stakeholders in implementing children rights in Kenya. The writers looks at the implementation of children rights after the adoption of the New Convection on the Rights of the child by the United Nations General Assembly on 20<sup>th</sup> November 1989 which, came into force on 2<sup>nd</sup> September 1990. The convection was created to address the issue of universal rights of the children. The convention has received an overwhelming international response with the exception of the United States and Somalia. The importance of the Convection lies in its status as an international legal and binding instrument. The articles of the Convection stipulate what states an obliged to do in different conditions. The Convection covers civil, political, economic, social and cultural rights. Apart from basic survival requirements such as food, clean water and health care, it also includes rights of protection against abuse, neglect and exploitation and the right to education and participation in social, religious, political and economic activities. The convection represents a turning point in the international movement on behalf of children's right. In this article, we set out to review the role played by stakeholders in implementing the children's rights in Kenya. Its worth noting that the government of Kenya has demonstrated its commitment towards children rights in Kenya. However, there are challenges facing implementation process in Kenya. Stakeholders therefore, need to work extra hard on enforcement of Laws affecting children in Kenya.*

**Keywords:** Accountability, Child's Rights, Implementation, Kenya, Stakeholders.

### INTRODUCTION

Since the mid 1990's public discourse project connected to the promotion of children's rights as citizens have taken a central place. Kjørholt, (2001). Notes that numerous projects have been developed around the theme of children's participation. He further highlights the ministry child and family affairs, ministry of environment, the ministry of cultural affairs, the Norwegian cultural affairs and Non –Governmental Organizations( NGOS) has having played an important role in implementing children's rights. The International discourse on children and participation points to a new vision of childhood intending to empower children in the society to a certain degree so as to replace to replace the notion of vulnerability and dependent child with the competent child who is given the right to participate in the society to a certain degree. This change in construction of childhood is described as recognition of children as human beings rather than human becoming ( Qvortrup, 1994).

### DEFINING CHILD RIGHTS

Children rights are human rights specifically adapted to the child because the rights take into account their fragility, specificities and age appropriate needs. These rights consider vulnerable character of the child which implies necessity to protect them due to their age and degree of maturity. Children will always depend on adults for their rights to be realized fully.

Pally (2014) further notes that the fact that there is a wide spectrum of civil, cultural, economic, social and political rights makes the definition of children right even more complicated. Beside the international community has developed rights protocols to describe the rights of the child. Most of African states have ratified the protocols and therefore shows their commitments towards children rights.

A right is an entitlement of every human being children like other human beings have a right which should not be violated. Franklin (2001) note in Kjørholt (2001), that definition of children is often contentious for example for those in legal profession it is restricted to processes that involve children in the criminal justice system and granting them representation in civil and political structures in society (Arts & Poproski, 2006).

Implementing Rights of the Child in African context currently there are lot of efforts to strengthen child protection systems in Sub-Saharan Africa (Lyncha & Onyango, 2013). The African states have acknowledged the rights of children by coming up with African Charter of 1990 which ratified by Kenya on July 25, 2000. The Charter was developed to domesticate the International Law of Children's Rights. The African Charter stipulates all the right of African child member on the member states. The rights of children in Africa remain difficult to be realized due to poverty among states. Rwenzaura (1998) states that poverty alone accounts for many problems faced by children in Africa.

Tang (2004) notes that National Governments are called upon to recognize the following rights and the responsibility for the implementation. Children have a right to survival and development (Article 6) Education (Article 27) and Health Care (Article 24). The findings indicate that there have been considerable improvements in terms of the development of policies and instrument concerning children rights. However, challenges around implementation were vividly due to poverty and cultural influence on child rights among the African States. There has been noted slow implementation of child's rights at the community level.

## **KENYAN SITUATION**

As early as 1919 missionaries in Kenya were concerned about exploitative child labour that reached a peak in 1930s when the British Council government was challenged to respond and Laws and Policies were introduced. By 1950, while abuse within the family being addressed with the establishment of approved schools and institutions for abandoned (Lynch and Onyango, 2013).

Regionally Kenya has ratified many International Protocols in governance of the Rights and Welfare of the child. There are convention of the rights and welfare of the child (Mildred and Plummer, 2009). This demonstrates a significant commitment by Kenya Government on Rights of Children. Child Right International Network (2000) affirms that as adualist state Kenya is required to domesticate International instruments in national arena through legislation by Parliament. This requirement led to the promulgation of the Children Act (Chapter 586 of the Laws of Kenya). The Act led to definition of a child in Kenyan Law cap 586 of 2001 which stipulates that a child in any human being under age of 18 years ( Odongo, 2004). Before Kenya Government signed these International Protocols the situation of children in Kenya was worsening day after the other since there were no laws enacted to protect their rights.

Since its ratification Kenya has been working hard to implement its ideals in domestic legislation concerning child care and protection. With promulgation of the Act which penalizes parents or guardians who refuse to enroll their children in school, Kenya begun realizing the gains of Free Primary Education (FPE) where school enrolment increased (Child

Rights International Network, 2010). Further, the Kenya government has introduced free day secondary education in order to increase access to secondary school education and consequently increase literacy levels among Kenyans. The outcomes are very encouraging with access rates rising. In 2008 the African Report on Child well being rated Kenya as one of the top most child friendly Africa government because it has put in place provisions to protect children against abuse and exploitation allocating a relatively higher share of national budget to provide basic needs of children and success in achieving relatively favourable wellbeing outcomes as reflected in the children themselves (CRIN, 2010).

CRIN further, notes that despite the domestication of international laws affecting children continue to be subjected to sexual violence prostitution, labour and other forms of violation. This may be due to the fact that most people in Kenya do not know or advocate for children rights due to lack of awareness of the same. They may lack awareness of procedures to be followed to ensure once children rights have been violated especially at the community level. Poverty among communities has led children to child labour in order to survive due to adequate care from their parents.

Kenya has established the National Council for Children Service whose mandate is to safeguard and promote the rights and welfare of children. Therefore it creates institutions that will protect the rights of children. The council is responsible for ensuring that Kenya realizes it's international obligations relating to children such as fulfilling the reporting requirements.

There are cases of innocent children below age four who are to make suffering in prisons as females inmates bring children with them to serve sentence since they have no one to look after them. Children living in such circumstances have growth and development interfered with children's court have been established to hear and try all matters concerning children other than a charge of murder. These courts are specially created to ensure the children's privacy and their uniqueness as children. This a major milestones interms of children justice in Kenya. Unfortunately many of children's cases are delayed due to situations whereby the files are missing. A lobby group interested in a case of a girl who was a rape victim had her case pending since 2009 to 2014 due to the a case of missing file.

The Government of Kenya in collaboration with non government organization (NGO) has created various children's institutions to rehabilitate and take care of children. These institutions should care and protect children. Some are operating with legal authority while others don't have approval to operate .

## **ACCOUNTABILITY**

Turkell, Vandenhole & Vandembogaerde (2013) note that , impact is very difficult to assess and measure as it is often not visible and it is indirect and therefore it is often impossible to attribute particular consequences to particular initiatives. They further their argument that "alignment of frames" that is, whether and to what extent NGOs and some states develop common frames and align and realign themselves is an important concept in assessing impact.

As a state party to the convention, Kenya is required to submit reports every five years and did submit its second periodic report in 2005 (CRC 2006a). This makes it difficult to measure their achievements on regular basis.

Deaf Aid which was founded in 2006 addresses the plight of children with disabilities whose needs are often neglected, especially in the educational system. By also targeting parents and the local community, Deaf Aid contributes to creating an environment conducive to

schooling for children, thus equipping them with skills and laying a foundation for future inclusion in society at large (Amiri & Tostesen 2011).

## **ROLE OF STAKEHOLDERS**

The Kenya NGO CRC Coalition brings together over 20 NGOs and Networks working for and with children in Kenya. Its purpose is to monitor and report on the implementation of the CRC (Kenya NGO CRC Committee, 2006). The awareness of child rights and the rationale under-pinning diversion has been raised in government departments and in the targeted communities through considerable training programmes. CBOs have worked with opinion leaders, chiefs and others to change attitudes towards children but it is a slow process (there have been cases of mob justice against children who have committed petty offences). In 2005 alone, a total of 375 police officers, 200 civil servants, and 100 members of the District Diversion Core Teams; 200 community members; and 40 media personnel underwent training in a course on child right at the Police College in Kiganjo (Amiri & Tostesen 2011).

Child Protection Centres (CPC) have been set up in Nairobi, Garissa, Eldoret and Mombasa to enable mainly street children vulnerable to violence, abuse, exploitation and family disruption to get access to basic services. These are only a few major towns in Kenya whereas much more districts are also suffering since they do not have the centres. United Nations Children Fund (UNICEF) supported the government in developing harmonized standards procedure for operation of CPCs in respect to administration, management including record keeping service provision and referral. By the end of 2009, 1,792 children (1430 boys and 362 girls) were registered as CPCs. A key element of the child system is the cash transfer programme for orphans and other vulnerable children (OVC) that was launched as a pilot in 2004 after political mobilization and publicity campaign dating back to the 2002 elections.

The Government of Kenya supporting the OVC children despite the fact that the population of OVC children is on increase and not forgetting the OVCs are mostly in poverty stricken areas. This compounds their vulnerability there are doubts whether the government is in a position to cater for the welfare of the increasing population of OVC children in Kenya considering the current trends of HIV& AIDs.

Early Childhood development Policy Framework 2006, stipulates that parents and teachers are entrusted with responsibilities of providing primary care, health and nutrition primary security and protection primary role of socializing children and inculcating life principles and spiritual and moral values for character development and providing enabling environment for the child's growth and development.

Parents who have an obligation towards their children security and protection are a time the same people who abandon their children while others kill their children for various reasons. Cases of child abandonments and neglect are on increase in Kenya. A couple left their young children locked in a house and left them unattended for some days. Others are cases of child rape by their fathers. Although the laws take its course the parents have failed.

Even after the ban of canning in schools due to Legal Notice No. 56 of 2001 was made cases of children and students being caned to extent of being injured and others dying are still there not enough has been done or effective alternative for disciplining children. Men teachers have been reported for raping girls and others sodomizing the boys' students. Despite the fact that they are supposed to be good role models child, advocates some have provided violated Children Right in Kenya.

Child marriage remains rampant in some communities in Kenya whose parents practice is under the cover of cultural beliefs which are against the rights of child. This affects the girl's participation in education and consequently sustaining poverty cycle. Children they deny their children education which is important tool to address retrogressive cultural practices who many early are potential victims of further abuse and exploitation. According to Kenya Demographic Health Survey (KDHS) 2008 women who are educated and economically empowered are less likely to experience sexual violence. It is noted that more than 25% Kenyan girls are married before age 18 despite the legislation by the government. Although the government has an obligation on children in need of special protection at times children suffer due to lack of proper network to access the care. Additionally institutions where these children can go for the special care are far from where children live.

Extreme poverty affects the welfare of children adversely. It limits the children access to important services and facilities like healthy foods education and medical care. Child prostitution though prohibited by law is on increase as result of steady rise in no poor children and orphaned children. Due to ineffective legislation on child labour extreme poverty has forced children to forego education. Girl child network which is a non-governmental organization mainly concerned with ensuring both boys and girls attain their right to education has been faced by some challenges. Slow implementation of legal framework particularly at community level affects the right to education especially to girl due to early marriage.

The judicial systems are still slow in making judgement on issues affecting children. At times there is preference of setting the matter outside the court or taking cultural adjudication process to avoid high costs and time consuming process of court procedure .

## **CONCLUSION**

The implementation of children's right is an international agenda with both developed and developing countries having a hand in the process. From the reviewed literature , states are faced with different child related issues emanating from contextual perspectives for instance, cultural beliefs, socio-economic status and religious ethics and family values. Thus, there is a need to work both with individual families and communities and to continue the advocacy battle for universal acknowledgment of children's rights and the provision of services to promote the welfare of children and protect them from abuses.

It is commendable that Kenya as put in place institutions that monitor and evaluate the implementation process. The legal and policy framework with regard to child rights in Kenya has improved tremendously in recent years (Amiri & Tostesen 2011). Something worth noting is the way teachers are conspicuously missing in all the areas of implementing children's rights. As primary caregivers, teachers have a lot of sake in the implementation process of the rights of the child and should be actively involved at all levels. However, I feel it also needs to work around challenges facing it as a country in implementing children's rights.

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