

## **Background**

Kenya's child population is estimated to be about 53% that is about 19 million out of the 34 million with an annual growth rate of 2.2%.<sup>1</sup> Currently, there are several legislative milestones that address the rights of the children in Kenya, starting with the new provision in the Constitution of Kenya 2010 Article 53 which provides for the rights of the children and lays more emphasis on the principle of the best interests of the child. The right to health entails enjoying access to treatment (curative) and preventive services such as health promotion and education, and clean and safe environments. The realization of health is interlinked with education, access to adequate housing, safe drinking water, sanitation, nutrition and social security. The five parameters of availability, accessibility, affordability, acceptability and quality are frequently used to assess the extent of realization of the right to health.<sup>2</sup>

Article 24 of the United Nation Convention on the Rights of the Child (CRC) provides that, "state parties should recognize the right of the child to the enjoyment of the highest attainable standards of health and to facilities for treatment of illness and rehabilitative health care interventions as well as protection of the rights of the society's most vulnerable individuals- children. This proviso has been domesticated by the Constitution and Children's Act 2001, which obligates the government to take legislative, policy and other measures to achieve the progressive realization of the rights as guaranteed in the constitution, including the right to health. The right to equality encompasses the right of a poor patient to quality health care regardless of their ability to pay. Further, Article 43 (2) prohibits denial of emergency medical treatment to a person.

The Kenyan Government through the Ministry of Gender, Children and Development which hosts the Department of the Children's Services (DCS) and the National Council on Children Services (NCCS) as well as the article 59 commissions (the KNCHR and Gender and Equality Commission-GEC) works closely to ensure the realization of the children's rights by enhancing the promotion and protection of these rights as provided for in the written national, regional and international laws and conventions.

The Ministry of Public Health and Sanitation via its key Division of Child and adolescent health (DCAH) is mandated to promote and participate in the provision of an integrated and high quality promotive, preventive and rehabilitative health care to all Kenyan children and adolescent. The DCAH ensures survival, growth development of children under the age of 5 years, health promotion in all children between 0-18 years, promotes good nutrition for children, expectant and nursing mothers and the health rights of the child.

## **Health challenges facing the realization of children's right to health in Kenya**

Kenya faces enormous health challenges which includes;

1. A high rate of maternal and neonatal mortality which is caused by low coverage of high impact interventions such as Zinc coverage is less than 1%<sup>3</sup>, poor care seeking among community members and inadequate health care workers (HCWs) trained among other factors. Kenya is still not on track to achieve the Millennium development goal #4 (MDG) targets, of reduction of child mortality by two thirds its levels in 1990. The current annual rate of reduction is not commensurate with the recommended mortality reduction rate of 4.4% annually.

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<sup>1</sup> Kenya National Bureau of Statistics, 2010 population census 2009 report.

<sup>2</sup> WHO fact sheet No. 323 August 2007: "The right to health." See [www.int/mediacentre/factsheets/fs323/en/index.html](http://www.int/mediacentre/factsheets/fs323/en/index.html).

<sup>3</sup> KDHS, 2008-2009

2. Inadequate health services in the health facilities available due to understaffing and lack of skilled /trained health workers. HCWs do not properly utilize their management skills during sick child consults, only 12.5% of children are assessed for the 3 danger signs (fever, cough/fast breathing and dehydration), 56% were checked for all main 3 symptoms, while 31% of the children were assessed correctly classified for main symptoms<sup>4</sup>. This shows gaps in sick child management at the facility level, hence the need to supervise, mentor and enhance HCW skills.
3. Poor remuneration and low morale of HCW which results to poor health care provision, low staffing in public health facilities as most HCW seek opportunities in private hospitals while still in civil service employment, this results to gross understaffing in rural facilities, this further affects the delivery of services to Kenyans. Furthermore industrial actions by the medical personnel have more often than not led to increased deaths.
4. Inefficiency in health system is a major cause of inaccessibility of health care services to the majority of Kenyans. This is as a result of managerial, financial and organizational problems such as imbalances in staffing, limited input in hours by staff, transport facility shortage, lack of maintenance of equipments leading to delays in referrals and high mortality rate, lack of drugs due to corruption in procurement processes. The inefficiency has also witnessed cases where drugs overstay in government stores and end up being destroyed.
5. Lack of an effective, transparent and accessible mechanism of accountability for the government in relation to the right to health financing as well as failure to ensure a public participation in health care policy making processes. There is need to initiate direct financing of implementation units in both medical and public health.
6. Lack of adequate human and financial resources allocation from the government to enable the health facilities to discharge their mandated activities efficiently.
7. Persistent deaths due to HIV/AIDS epidemic as well as other chronic diseases such as cholera which are caused by lack of access to clean water, sanitation and other environmental
8. Lack of an adequate system of collection disaggregated health data to monitor the realization of the right to health.
9. Continuous fights by the private health maintenance organizations and private hospitals associations in Kenya, who fear that private medical schemes and quality of private care would suffer as a result of introduction of inpatient services to the NHIF.
10. The legal framework governing regulation of provision of healthcare by private sector is inadequate as it seems to regulate only inputs and promotes discrimination of the special groups, disabled, poor and OVC. The laws are poor enforced and so do not have the desired effect as the private sector is also marked with malpractices, inefficiency poor service and poor quality. This is evidenced by the constant mushrooming of clinics managed by unqualified people (quacks) further endangering the health of the public.
11. A survey<sup>5</sup> revealed that 1.6 million persons have disability, 80.9% children with disabilities were aware of the health services (through proxy), while others needed health care services and assistive or supportive devices hence the need for the Government to ensure implementation of the laws protecting the rights of the persons with disability in particular the right to health.

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<sup>4</sup> 2010 Intergrated management of childhood illnesses (IMCI)-Health facility survey.

<sup>5</sup> Kenya National Survey of Persons with Disabilities (KNSPWDs) 2007

### **Barriers to the children's right to health include:**

- Lack of equity in access to health care and inadequate health care services remain a major contributing factor to infant mortality and morbidity among the poor and marginalized communities. The disparity exists between the rich and the poor and leads to inaccessible health care services. It is therefore notable, that for achievement of the health related MGDs, equitable expansion of access to basic services for all is necessary.
- Enforcement of good legal and policy provisions is hampered by attitudes, retrogressive cultural practices and ignorance.
- Poverty plays a major role in creating barrier to realization of the child right to health, this is due to lack of essential facilities in public health facilities, inaccessible facilities due to the long distance and high cost of transport, or poor roads, lack of money to pay for fees charged for various health services except for the official exemption of the pregnant women and the children under 5 years and lack of confidence with the services offered at the local health facilities due to poor quality of services or negative attitudes.

### **National policies, strategies and plans of actions for addressing the priority health concerns and challenges facing children's right to health in Kenya**

While acknowledging the Declaration of Alma-Ata<sup>6</sup> which emphasized the need for states to formulate national policies, strategies and plans of action for their national health systems;

Kenya has through its Ministry of medical services and Ministry of public health has formulated the following national policies, strategies and plans for actions:

- Multi-year strategic plans such as the National health strategic plan, the health information systems strategic plan 2009-2014.
- Malaria Prevention Act (1929), Diarrhea policy, Pediatric Protocols, Essential newborn care
- ECD concept note.
- Children's Act 2001, Provides for the right to health of child and in particular the right to the highest attainable standard of health.
- Public Health Act governs the Ministry of Health operations with the aim of ensuring efficient health services to the citizens of Kenya.
- HIV/AIDS prevention and control Act 2006; provides for free prevention of mother to child transmission (PMTCT) services in government health facilities.
- The Sexual Offences Act 2006 specifically section 35 advocates for free access to medical attention for all survivors of sexual abuses in any public hospital.
- The Prohibition of Female Genital Mutilation Act, 2011 provides for opportunities for eradication of Female genital mutilation (FGM) to combat traditional practices which are harmful to the health, survival and development of children.
- Tobacco Control Act, 2007; provides for the protection of the health of the persons below eighteen years by preventing access to tobacco products and tasks the Ministry of Education is to integrate tobacco matters into syllabuses.
- Employment Act, 2007; bars employment of children between the age of 13-16 years to perform work which is likely to be harmful to the child's health or development.

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<sup>6</sup> The declaration of Alma-Ata of 1978 is a major milestone in public health. It identified primary health care as the key to the attainment of the goal of health for all. See [www.who.int/social\\_determinants/tools/multimedia/alma/ata/en/index.html](http://www.who.int/social_determinants/tools/multimedia/alma/ata/en/index.html) website last reviewed on 25 April, 2010.

- The person with disability Act- which protects the rights of the persons with disability.
- Food drugs and chemical substances Act, 1992
- Refugees Act 2006 protects the rights of the refugee children, whether accompanied or not.

Several policies have also been developed by the various stakeholders in the field of health all with the aim of ensuring promotion and realization of children's right to health. They include:

- Kenya National Health Policy and Guidelines (KNHPG) which were launched in 2009 with the aim of making significant progress towards improving health and education standards of school children. The Policy compliments other existing education and health policies while the Guidelines includes 8 thematic area such as values and life skills, gender issues, child rights and protection, water, sanitation, hygiene, nutrition, disease prevention and control, infrastructure and special needs. The KNHPG pays particular attention to the principles of gender and non discrimination and respects the inter relatedness of human rights by linking the rights to health to other rights such as right to water, sanitation, information, food /nutrition, privacy and education.
- Child Survival Development Strategy 2008-2015 aimed at ensuring delivery of efficient and effective services to improve the lives of women and children thus reduction of health inequalities and reversal of the downward trend in health related indicators with a focus on child survival and development. In a nutshell, it identifies the priority interventions/ actions to address child health problems.
- National Manual and Guideline on the Identification and Referral of Children with Disabilities and Special Needs.
- The National HIV/AIDS Strategic Plan 2009/10-2012/13 which borrows from the national guidelines on prevention of mother to child transmission (PMTCT). These services are free in the government facilities and the country has also adopted the WHO guidelines on infants and young child feeding in the context of HIV, this has further promoted breastfeeding with the use of antiretroviral therapy (ARVs) to protect infants and early diagnosis.
- The Budgeting Guidelines were launched in 2010; to better link the national and sub national planning and budgeting with priority of community needs.
- The NCCS has established Child Participation Committees at National level to ensure meaningful participation of children at all levels.
- The National Poverty Eradication Plan (1999-2015) which focuses on reduction of socio-economic inequality, by seeking to change inequality through recognition to the right to literacy and numeracy, health and freedom from preventable disease, sufficient food and clean water
- Kenya has established a health policy framework which encourages other health providers to establish health facilities in underserved communities and especially in rural areas and remote areas including urban informal settlements.
- A comprehensive Early Childhood Development and Education curriculum has been developed by the Kenya institute of Education (KIE) to focus on the 4-6 year olds. Good progress has been made in ECD in pre-school programmes (for 4-5 years old) with a current national access rate of 60.2% (boys 61.6% and girls 58.7%)
- The Education sector has developed an implementation plan for mainstreaming 4-5 years old into free primary education (FPE), mainstreaming ECDE into basic education is one of the goals of the second phase of Kenya Education sector support programme (KESSP) 2010-2016.

## **Best practices**

- Kenya has established a Cash Transfer Program that delivers financial and social support directly to the poorest households containing OVC, with special concern for those children with or affected by HIV/AIDS. This effort is drawn from lessons learnt from research and program development on cash transfers in Latin America among others countries. This program further describes cash transfer in light of human rights as they relate to child's health. This program delivers cash to families, which they can use to pay for food, clothes and services such as education and health. The aim of the program is to keep OVC within their families and communities and to promote their development thus improvement of the children's health and nutritional status.
- The use of the devolved funds like the constituency development funds (CDF) to provide further health financing in areas which are marginalized by encouraging building of health facilities.
- The Government has also adopted guidelines developed by WHO on Universal Immunization of Children against the 6 vaccine preventable diseases, which are crucial to reducing infant mortality and child mortality. This has led to substantial increase in childhood immunization coverage levels at the national level for example in north eastern the population that is fully immunized from 9% in 2003 to 48% in 2008-09.<sup>7</sup>
- The Government has invested significantly in expansion of health personnel and health infrastructure through training, although the distribution in the growth is uneven with heavy concentration of government medical staff in Nairobi.
- Kenya has a National Hospital Insurance Fund (NHIF)<sup>8</sup> which aims at providing equity in Kenya's health care financing and scale up of the output based approach system to enable the disadvantaged groups to access health care services from preferred institutions. There are ongoing efforts to develop an alternative scheme referred to as the national social health insurance (NSHI) which is yet to be implemented, with the hope of making health insurance more accessible to the poor.
- The needs of children aged 0-3 years have been addressed with health and nutrition interventions through integration of psychosocial stimulation in infant and young child feeding (IYCF) and Community level component of integrated management of childhood illnesses(C-IMCI). However, there is need to address the component off pregnancy -3year old and make the programme more holistic to address all aspects of a child's development.
- Further actions such as increase in primary health facilities under the Strategic Plan for Rationalization of Health care Services in level 3 and 4 are ongoing. This has resulted to an increase in the number of health facilities from 4,912 in 2005 to 7,111 in 2010.

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<sup>7</sup> Kenya –Demographic and Health Survey (KDHS)2008-09

<sup>8</sup> NHIF is a State Parastatal established in 1966 as a department under the Ministry of Health. The original Act of Parliament that set up this Fund in 1966 has over the years been reviewed to accommodate the changing healthcare needs of the Kenyan population, employment and restructuring in the health sector. Currently an [NHIF Act No 9 of 1998](#) governs the Fund.