



## KENYA'S 3<sup>RD</sup> CYCLE UPR REVIEW

### SUBMISSION ON THE STATUS OF THE REALISATION OF THE RIGHT TO EDUCATION IN KENYA

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#### A. EXECUTIVE SUMMARY

1. Elimu Yetu Coalition (EYC) is Kenya's National Education Coalition, established in 1999 as a national platform for civil society organizations, professional groupings, education/research institutions and other non-state actors in Kenya's education sector to lobby for the implementation of Education for All (EFA) goals as articulated in the Jomtien Declaration in 1990 and Dakar Framework of Action in 2000. The EFA goals were also echoed during the Millennium Development Goals (MDGs) summit in 2000 and in subsequent meetings held in Monterrey, Doha, Rome, Paris, and Accra as well as in several G8 declarations. Thus, establishment of EYC was part of the local efforts to support achievement of the EFA goals in the country. At the moment EYC is at the forefront of supporting the Education 2030

framework for action for the implementation of sustainable development Goal 4. Elimu Yetu Coalition is submitting this report on behalf of the Civil Society Organisations listed above.

2. This report is on the status of the realization of the right to education in Kenya. This submission covers the period from 2015, when Kenya underwent its 2<sup>nd</sup> periodic review, to 2019. In the previous cycle, the government was urged to continue strengthening its successful educational policies for primary, secondary and higher education in order to provide the greatest welfare and quality of life to its people. This was captured under Recommendation Nos. 142.151; 142.170; 142.171; 142.172; 142.173; 142.174; 172.175; Committee on the Rights of the Child (CRC) Rec 38; and Committee on Economic Social and Cultural Rights (CESCR) Rec 58. The specific actions required from the Government included:
  - 21.1.1 Take policy, legislative and other measures to improve access to education for all particularly the vulnerable and marginalized.
  - 21.1.2 Take policy, legislative and other measures to ensure that special education needs are addressed.
  - 21.1.3 Improve the quality of education in Kenya by improving the teacher to student ratio and the student to text book ratio.

This report highlights, progress made by the state as well as challenges that still exist and are a barrier towards the realization of the right to education for all children of Kenya

## **B. NORMATIVE & INSTITUTIONAL FRAMEWORKS FOR THE PROMOTION AND PROTECTION OF THE RIGHT TO EDUCATION**

3. Article 43(1) (f) of the Constitution of Kenya (2010) acknowledges that everyone has the right to education. Specifically, children's right to education is entrenched in article 53 (1) which provides that every child has the right to free and compulsory education. This is not subject to progressive realisation. Further, the Constitution of Kenya (2010) Article 54 (1) (b) provides that persons with disabilities have a right to access educational institutions and facilities that are integrated into society, to the extent compatible with their interests and needs.
4. Article 2 (6) of the Constitution of Kenya recognises that "Any treaty or convention ratified by Kenya shall form part of the law of Kenya under this Constitution". Kenya has ratified a number of human rights treaties including the United Nations Convention on the Rights of the Child (UNCRC), International Covenant on Economic, Social and Cultural Rights (ICESCR), Universal Declaration on Human Rights (UDHR), African Charter on Human and Peoples Rights (ACHPR), and the African Charter on the Rights and Welfare of the Child (ACRWC) among others, and they are as a result legally binding on the State. Most of these treaties provide that every individual shall have the right to education
5. The Basic Education Act (2013), in line with the Constitution of Kenya, guarantees free and compulsory education for all children. It further guarantees equitable and equal access and promotes quality and relevance, accountability, non-discrimination and equal standards across all basic education institutions. Furthermore, Section 29 of the Basic Education Act (2013) allows public institutions to institute a variety of charges and states that these charges must be approved by the required authority and that no child should be turned away from school for not paying these fees.
6. Section 29 of the Basic Education Regulations 2015 provides that learners of school going age residing in children's homes, borstal institutions or other corrective facilities be provided with basic education and training pursuant to Article 53, 54, 55 and 56 of the Constitution.

7. The Convention on the Rights of the Child and the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules) outline provisions for the protection of girls in the Juvenile Justice System (JJS) in order that they not be discriminated against. Human rights treaties ratified by the State also require the respect, protection and fulfilment of the right to education for children in these institutions.
8. In the Abidjan Principles article 45 and 46<sup>1</sup> state that “there is a strong presumption that retrogressive measures taken in relation to the right to public education are impermissible. If, in exceptional circumstances retrogressive measures are taken, the State has the burden of proving that any such measure is in accordance with applicable human rights law and standards”. Additionally, States that are providing international assistance and cooperation must not adopt, support, or require impermissible retrogressive measures with regard to the right to public education.

## C. ACHIEVEMENTS, GAPS, AND RECOMMENDATIONS

### Lack of adequate policy coordination

9. There has historically been a gap in policy coordination at the national level and lack of proper planning in the roll out of education reforms. For example, Kenya launched the National Pre-Primary Education Policy in September 2018. However, currently only 17 out of 47 counties have a Bill, Act or Early Childhood Development (ECD) policy in place. Additionally, there is no national coordinative mechanism or guidelines for the implementation of the policy. Therefore, Counties domesticate the policy in a discordant manner.

### 10. Recommendations

- i. The state to Re-establish and adequately resource the National Education Board mandated to advise the Cabinet Secretary on policy issues within the education sector.
- ii. The state to establish the required strategic coordinative mechanisms to enhance policy integration and participation especially in areas concerning early childhood education, refugee education and curriculum reforms.
- iii. The state to Enhance stakeholder participation in the development and implementation of the National Education Sector Strategic Plan (NESSP) (II) and the National Education Sessional Paper (2019).

### Quality Assurance

11. The state has engaged in efforts to ensure the quality of schools are improving for instance through the Kenya Primary Education Development (PRIED) Project (2015-2018)<sup>2</sup>. The project targeted school improvement initiatives in 4,000 poor performing schools across the country. However, A National Quality Assurance framework to facilitate monitoring and evaluation and to support quality improvements in schools is lacking. This has been detrimental to the quality of education and is evidenced in various ways including that 70.0% of teachers were reported to not have been assessed on curriculum implementation over a four year period.<sup>3</sup>

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<sup>1</sup> Abidjan Principles (2019): The Guiding Principles on the Human Rights Obligations of States to Provide Public Education and to Regulate Private Involvement in Education

<https://static1.squarespace.com/static/5c2d081daf2096648cc801da/t/5caf90114785d3c2ac9b7cef/1555009556517/Abidjan-Principles-Designed-online-v4.pdf>

<sup>2</sup>Ministry of Education (MoE). Kenya Primary Education Development Project

<http://www.education.go.ke/index.php/programmes/kenya-primary-education-development-project>

<sup>3</sup> Abidjan Principles (2019): The Guiding Principles on The Human Rights Obligations Of States To Provide Public Education And To Regulate Private Involvement In Education. Available at: <https://bit.ly/2KHKJD1>

12. The quality assurance function remains grossly under resourced with little publicly available data on the state of quality assurance at the national level.<sup>4</sup> <sup>5</sup>

### **13. Recommendations**

- i. **The state to develop, disseminate and sensitize education stakeholders on a National Quality Assurance Framework**

#### **Return to school Policy for teenage mothers**

14. According to the Kenya Demographic Health Survey (2014)<sup>6</sup>, 18% of girls have experienced a pregnancy by the age of 18 years, making it one of the major causes of school dropout among teenage girls. Similarly, between June 2016 and July 2017, 378,397 adolescents in Kenya aged 10 to 19 got pregnant<sup>7</sup>. A total of 28,932 of these girls were aged between 10 and 14 years, while 349,465 girls were between 15 to 19 years<sup>8</sup>. The 1994 “Return to School” or School Re-Entry Policy permits a pregnant girl to return to school after child birth, while the 2009 “National School Health Policy” permits pregnant girls to remain in school for “as long as possible.” This misalignment between the Return to School Policy and the National School Health Policy<sup>9</sup> lends itself to confusion among School heads on how to handle pregnant learners, with many ending up sending expectant learners home.

15. There is only one publicly accessible document that outlines the school re-entry policy guidelines<sup>10</sup>. One study documents school heads’ requests for information on the number of times a parenting girl should be allowed to re-enter school, given the reality of repeat pregnancies, while highlighting the need for monitoring of the policy implementation process.<sup>11</sup> In response, the Government is developing the National Guidelines for School Re-Entry in Basic Education, which will include the re-entry of teenage mothers to school as a thematic area. However, to date there has been lack of adequate dissemination of the guidelines. As a result, the practice of expulsion of expectant girls from schools remains the norm.

### **16. Recommendations:**

- i. **Ensure the guidelines for School Re-entry in Basic Education address identified gaps.**
- ii. **Launch, disseminate, and implement the guidelines for School Re-entry in Basic Education**

#### **Access to Education for Learners with Disabilities**

17. The Kenya National Special Needs Education Survey Report (2016) indicates an increase in the number of learners with special needs and disabilities enrolled in special schools. Since 2003, the government has been providing capitation for

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<sup>4</sup> Mwaura, G, (2014) The Role Of Quality Assurance and Standard Officers In Promoting Education In Private Secondary Schools In Limuru District, Kiambu County. <https://bit.ly/2WbTZXb>

<sup>5</sup> Okoth, J.O., Maneno, R., Amuka, L.A (2018)Education Quality Assurance And Standards In Kenya: Overseeing Curriculum Implementation And Delivery In Secondary Schools – A Case Of Taita Taveta, African Journal of Education and Practice Vol.3, Issue 2, pp 30-41, <https://www.iprib.org/journals/index.php/AJEP/article/view/713/855>

<sup>6</sup> Kenya National Bureau of Statistics (2015) Kenya Demographic and Health Survey 2014 p. 78. Available at: <https://dhsprogram.com/pubs/pdf/fr308/fr308.pdf>

<sup>7</sup> UNFPA Annual Report 2017. <https://kenya.unfpa.org/sites/default/files/pub-pdf/KCO%20Annual%20Report%202017.pdf>

<sup>8</sup> Ibid.

<sup>9</sup> Undie, C., Birungi, H., Odwe, G. and Obare, F. (2015). Expanding access to secondary school education for teenage mothers in Kenya: A baseline study report. STEP UP Technical Report. Nairobi.

<sup>10</sup> Muganda-Onyando, R. & Omondi, M. (2008). Down the drain: Counting the costs of teenage pregnancy and school drop-out in Kenya. Nairobi: Center for the Study of Adolescence.

<sup>11</sup> Undie et al. (2015). Education sector response to early and unintended pregnancy: A policy dialogue in Homa Bay County, Kenya. STEP UP Meeting Report. Nairobi

learners with disabilities<sup>12</sup>. However, the criteria the government applies in calculating the capitation grant is unclear. The current amount fails to take into consideration the type of disability, the individual needs of the learner, support services and personnel required<sup>13</sup>. Additionally, the current figures represent a very small increase from the initial amounts set in 2003 when Kenya introduced free primary and day-secondary schooling. The Sector Policy statement on financing and sustainability (2015), indicates that, the Ministry of Education shall continuously review and increase budgetary allocations to institutions and programmes<sup>14</sup>. Despite this, budget allocations to special needs education directorate remains the lowest compared to allocations to other directorates. Most schools are therefore not well equipped to teach children with disabilities<sup>15</sup>.

18. There is lack of alignment of National policies such as the Sector Policy for Learners and Trainees with Disability (2018) and the Competency Based Curriculum with Article 24 of the Convention on the Rights of Persons with Disability (2006). This convention requires reforms in the teacher education curriculum and programmes to reflect a move away from special education to inclusive education discourse and approaches.
19. Kenya has not signed nor ratified the Protocol to the African charter on Human and Peoples' Rights on the Rights of Persons with Disabilities in Africa despite its commitment<sup>16</sup> to do so during the Global disability summit in 2018.

## 20. Recommendations:

- i. Align the sector policy for learners and trainees with disability and the Competency Based Curriculum with article 24 of the Convention on the Rights of Persons with disability.
- ii. Develop a differentiated unit cost for educating learners with different types of disabilities taking into account the type of disability and individual needs of the learners.
- iii. The state to mainstream inclusive education approaches and teaching/learning pedagogy into teacher training curriculum.
- iv. Sign and ratify the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Persons with Disabilities in Africa.

## Education Financing

21. Kenya has made several strides towards increasing the size of the education budget, targeting a share of 30% of the national budget. Recent budget allocations further indicate that Kenya has made positive steps to increasing allocations and even surpassed the recommended global minimum allocation. This notwithstanding, over 90% of the allocation goes to recurrent expenditure which fails to address: teacher scarcity; improving the quality of education; the strain on school infrastructure and capacities that comes as a result of initiatives such as Free Primary School (FPE), Free Day Secondary Education (FDSE); and the implementation of the 100% transition policy. Additionally, current allocations are not equitable, with allocations not informed by needs-based considerations. For instance funding that is based on school enrolment levels leads to severe underfunding of schools that serve poorer regions and that suffer low enrolment and encounter large out-of-school populations.<sup>17</sup>

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<sup>12</sup> Ministry of Education (MOE) Sector Policy for Learners and Trainees with Disabilities (2018) pg. 30-31

<sup>13</sup> Ibid.

<sup>14</sup> Ibid.

<sup>15</sup> Ibid.

<sup>16</sup> Gov.UK. 2018. Global Disability Summit: Commitments. <https://www.gov.uk/government/collections/global-disability-summit-commitments>

<sup>17</sup> Alemayehu, W., Watkins, K. (2012). Financing for a Fairer, More Prosperous Kenya: A review of the public spending challenges and options for selected Arid and Semi-Arid counties. <http://www.brookings.edu/~media/research/files/reports/2012/8/08-financing-kenya-watkins.pdf>

22. Higher education takes up a significant portion of the education budget, having been allocated 91 billion for approximately 550,000 students compared to 13.4 billion for free primary education<sup>18</sup> which caters for over 10 million pupils.<sup>19</sup>
23. A common challenge regarding financial management within schools is delays in disbursements which sometimes takes up to two months to enter school accounts after schools have opened<sup>20</sup>
- 24. Recommendation:**
- i. The Ministry of Education should Increase the ‘scrutiny’ and ‘sensitivity’ of the education budget as stipulated in the “4S” <sup>21</sup> framework
  - ii. The state should rationalize and prioritize basic education in Education budget allocation.
  - iii. The state to establish a taskforce including a wide selection of stakeholders to review the set capitations for Basic Education Financing at schools and specifically develop a criterion for allocation of funds to schools based on a set standard of schools’ operations and needs.
  - iv. Rationalize and prioritize basic education in Education budget allocation.

### **Limited Transparency and Accountability**

25. Corruption and misappropriation of resources within the education sector leads to resources being diverted away from the education of children.<sup>22</sup> At the school level, challenges resulting in the heightened risk of misappropriation of funds include: Poor record keeping, poor accounting systems and procedures; Community/parents limited commitment and capacity to monitor and control the use of school funds; lack of effective auditing and supervision; an inflexible budgeting process that fails to recognize the needs of different schools; and delays in disbursement of funds from Government.<sup>23</sup> Additionally, the Ministry of Education often receives adverse audit opinions from the Auditor General and the controller of Budgets but little corrective action is taken. For instance, between 2013-2016 the following received negative or questionable audit opinions: the GOK/OPEC Basic Education Improvement Project (OPEC Loan No. 910P), Kenya Education Sector Support Programme (KESSP), Education III Project- Strengthening and expanding access to appropriate Secondary Education and skills Acquisition, GOK/WFP Food assistance to Primary and Pre-Primary Schools in Semi-Arid and Disadvantaged urban children project (WFP Project No. CP 106680)<sup>24</sup>.
26. Limited access to information hampers transparency and accountability efforts. Various examples can be cited for instance, there is currently no centralized information portal on the education budget nor is the information readily accessible to the public on the Ministry of Education website- or via other avenues; Additionally, disaggregated data on special populations is lacking and continues to hamper effective planning and budgeting for delivery of quality education services. 75% of organisations working with persons with disabilities stated that data on the number of persons with

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<sup>18</sup> National Treasury and Planning, Budget; the “Mwananchi” Guide 18/19.

<sup>19</sup> Kenya National Bureau of Statistics (2018). Kenya Economic Survey 2018. Available at: <https://www.knbs.or.ke/download/economic-survey-2018/>

<sup>20</sup> A4T <https://actionfortransparency.org/view/resources/education-resources-default/education-sector-policy-brief-1-2/>

<sup>21</sup> Global Campaign for Education. 2016. Financing Matters: A toolkit on Domestic Financing for Education.

[https://www.campaignforeducation.org/docs/resources/GCE%20Financing\\_Matters\\_EN\\_WEB.pdf](https://www.campaignforeducation.org/docs/resources/GCE%20Financing_Matters_EN_WEB.pdf)

<sup>22</sup> Ethics and Anti-corruption Commission. 2015. Examination report into the disbursement and utilization of free primary Education funds.

<sup>23</sup> Action for Transparency. 2019. Education Sector Policy Brief 1: Enhancing The Ability Of Citizens To Monitor The Use Of Public Resources.

<https://actionfortransparency.org/knowledge-base/education-sector-policy-brief-1/>

<sup>24</sup> IEA (2019) Analysis Of The Auditor General’s Reports On The Financial Statements Of National Government.

<http://www.ieakenya.or.ke/publications/research-papers/analysis-of-the-auditor-general-s-reports-on-the-financial-statements-of-national-government>

disabilities overall and the number of persons with disabilities who are accessing education is inadequate<sup>25</sup><sup>26</sup> Additionally, up to date data on out-of-school children is not readily available. Where ECD is concerned only 35 counties publish budget information regarding ECD on their websites. This information is usually not indicated year on year, is not reported in a standard format and is not usually comprehensive. Few report on enrolment at the ECD level year on year. Few report on ECD projects year on year and less than 20% of all counties looked at had a working contact number available on the website. Those on the website either did not go through, were private numbers of officers that had since left that office or lacked information on ECD. Lastly, while access to information legislation was enacted<sup>27</sup>, there are currently no regulations that address issues of processing information such as cost, fees, language and other limitations of access to information<sup>28</sup>.

27. Additionally, Boards of Management (BOMs) and Parent Associations (PAs) are not adequately capacitated to effectively participate and contribute to the affairs of the schools<sup>29</sup>. These are school governing bodies mandated to provide financial oversight and school improvement planning<sup>30</sup> and though some interventions such as the PRIEDE<sup>31</sup> project exist, capacity building of Boards of Management and Boards of Governors, is not institutionalized at the national level for all schools. So far, these initiatives have been based on short term project based funding such as the PRIEDE<sup>32</sup> project which targets only 4,000 out of over 30,000 public schools. Alternatively, efforts are mainly driven by civil society initiatives. Both are not the most sustainable means of ensuring transparency and accountability within schools.

## 28. Recommendations:

- i. Strengthen access to information provisions including proactive disclosure of information in a clear, timely, and appropriate manner including information on studies, reports, assessments, circulars, memoranda, analyses, strategies and policies and strengthening the effectiveness and responsiveness of complaint mechanisms.
- ii. The state to Develop a public interphase in the National Education Information Management System (NEMIS) with financial/budgeting data for schools, reports on implementation of programmes for schools' improvement; segregated demographics data from sub-county level including teacher: student population ratios, gender and disability; academic/performance reporting; and implementation reports of policy directives for the Education Sector;
- iii. The Ministry of Education through the Ethics and Anti-Corruption Commission to commission a policies, procedures, systems and practices review of public primary and secondary schools with a view of identifying the administrative, policy and legal to be addressed in ensuring effective utilization of resources at these institutions. Develop an implementation framework including all stakeholders in addressing the identified reform areas.
- iv. The state to take appropriate action on audit issues raised in the audit reports.

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<sup>25</sup> MoEST and VSO Jitolee (2016), Kenya National Special Needs Survey Report, Technical report, Nairobi: MoEST.

<sup>26</sup> Inclusion Africa. 2017. Inclusive Education for Learners with intellectual disabilities in select African countries: A baseline Survey.

<sup>27</sup> Kenya: Parliament passes Access to Information law:

<sup>28</sup> Education for All Global Monitoring Report-Policy Paper 19 <https://unesdoc.unesco.org/ark:/48223/pf0000232721>

<sup>29</sup> Action for Transparency. 2019. Education Sector Policy Brief 1: Enhancing The Ability Of Citizens To Monitor The Use Of Public Resources. <https://actionfortransparency.org/knowledge-base/education-sector-policy-brief-1/>

<sup>30</sup> Ministry of Education. Capacity Building of Boards of Management: Training Manual.

<sup>31</sup> Ministry of Education (MoE). Kenya Primary Education Development Project.

<http://www.education.go.ke/index.php/programmes/kenya-primary-education-development-project>

<sup>32</sup> Endo-Kenya (The World Bank). Kenya - Global Primary Education Development Project: Additional Financing: Environmental Assessment: Environmental and Social Management Framework. <http://documents.worldbank.org/curated/en/486681557313901013/Environmental-and-Social-Management-Framework>

## **Access to Education for marginalized populations**

29. There is a limited supply or availability of public schools in marginalized areas<sup>33</sup>
30. The Fourth State of Human Rights Report by the Kenya National Commission on Human Rights, states that important barriers to accessing public education include: insufficient learning facilities and poor learning environment especially in urban slums.<sup>34</sup><sup>35</sup> It further identifies high costs (including hidden costs and additional charges and levies)<sup>36</sup> of education and poor quality of education as the main challenges facing the realization of the right to education in Kenya.<sup>37</sup>
31. The national, donor supported school feeding programme came to an end in 2018. The cost of school feeding has therefore been transferred to parents many of whom are unable to pay the added cost, especially in pockets of poverty in urban areas and in other marginalized areas.<sup>38</sup> This should be considered a retrogressive measure given that evidence highlights the positive impact of such programmes on enrolment, completion and student outcomes.

## **32. Recommendations:**

- i. Take action to ensure the elimination of illegal levies charged in schools. These include interview, admission, examination, activity, remedial class, teacher motivation and food programme costs.
- ii. Construct more quality public schools especially in marginalized areas and urban informal settlements to ensure every child has access to a public school
- iii. Reconstitute a publicly funded feeding programme targeting all children in poor and marginalized areas.

## **Privatisation of Education**

33. The expansion of privatisation of education in Kenya has occurred without corresponding improvements in public education and the absence of stringent enforcement of the regulatory framework. This therefore contributes to the widening of inequalities<sup>39</sup>.

## **34. Recommendations:**

- i. Adequately monitor and regulate private actors in education, including registration of Alternative Provision of Basic Education and Training (APBET) institutions that are in compliance with the registration standards.
- ii. Address gaps in the APBET registration guidelines

## **Educating children in conflict with the law and Children in corrective and rehabilitation centres**

35. The government through the Children's Department has restored the dignity of children in these institutions by renaming the institutions 'Rehabilitation' schools instead of 'Approved' schools. The Government has also made sure

<sup>33</sup> Moses Ngware et al (2013). Quality and access to education in urban informal settlements in Kenya. <https://aphrc.org/wp-content/uploads/2013/11/ERP-III-Report.pdf>

<sup>34</sup> Ibid.

<sup>35</sup> Kenya National Commission on Human Rights, Fourth State of Human Rights Report, 2010-2014 – Human Rights: The Elusive Mirage, pg 58.

<sup>36</sup> Action for Transparency. 2019. Education Sector Policy Brief 1: Enhancing The Ability Of Citizens To Monitor The Use Of Public Resources. <https://actionfortransparency.org/view/resources/education-resources-default/kariobangi-south-primary-school-parents-complain-over-payment-of-outlawed-fees-2/>

<sup>37</sup> UNGEI School Fees Abolition Initiative - School Fees: A Major Barrier to Education Access, [http://www.ungei.org/infobycountry/247\\_712.html](http://www.ungei.org/infobycountry/247_712.html)

<sup>38</sup> barriers to enjoying the right to education in Mathare informal settlement <https://eachrights.or.ke/?P=1618>

<sup>39</sup> Kenya's Support to Privatization in Education; the Choice for Segregation? Report to the Commission on Human and People's Rights 2015.

that the schools are registered as National Industrial Training Authority (NITA) and Kenya National Examinations Council (KNEC) examination centres, thereby saving the tax payer the cost of transporting children to other centers for their trade tests or for national examinations. However, Education provision remains wanting within the Juvenile Justice System in Kenya. Specific challenges concerning this include;

- Lack of provision of all subjects, levels or classes at various juvenile institutions;
  - Limited number of teachers posted at the Juvenile institutions which has implications for Pupil Teacher Ratio, increased workload, and adequacy of instructional and learning materials, which all lead to inadequate coverage of the curriculum.
  - Poor learning environment: Many of the facilities are not up to par including classrooms, desks and chairs, teachers' staff rooms, toilets etc. This in turn breeds disparity in the choices a juvenile has compared to children in mainstream educational facilities.
  - Re-designation from teachers to Children Officers is common practice, as teachers are employed by the children's Department and not Teachers' Service Commission (TSC), making it difficult for children to recover when the changes are effected mid-term with no immediate replacement.
36. Many children in conflict with the law are also victims of discrimination: These children face several hurdles reintegrating both into society and into mainstream schools. For example, transition from primary to secondary school is often difficult due to the stigma that society has placed on children who join secondary school from these institutions. Some principals label them "problematic children" and victimize them on any slight provocation. Similarly access to the labour market comes with its challenges. It is necessary that measures are taken to prevent such discrimination, by providing former child offenders with appropriate support and assistance in their efforts to reintegrate in society, and to conduct public campaigns emphasizing their right to assume a constructive role in society.
37. The impact of poor education provision in JJS exposes these children to a significantly higher risk of reoffending. Recidivism results into their entry into the adult criminal justice system.

### **38. Recommendations:**

- i. Generate data on children in conflict with the law, children with disabilities, refugees, and out of school children, to be used to improve service provision in education.
- ii. Improve funding and resources (including human resources) for juvenile justice institutions educational framework, to match the mainstream basic education provisions.
- iii. Formulate, adopt and implement a policy guiding on transition and treatment of children from Juvenile justice Institutions as they transition to the mainstream educational institutions

### **Lack of Access to Education for Refugee Children**

39. Kenya signed the Djibouti Declaration in December 2017, committing to include all refugee and returnee children and youth in national education plans by 2020 and to expand their training opportunities<sup>40</sup>. Through the Educate a Child global programme launched in 2012, enrollment of children improved to 109% in Kakuma, Kenya; and by 80% in Kenya's Dadaab camps<sup>41</sup>. However, despite these positive developments, many challenges hinder access to basic quality education for refugee children including:
- No adoption of a policy on refugee inclusion in national public schools rather than building parallel systems meant for refugee children.

<sup>40</sup> UNHCR. 2017. Turn the Tide: Refugee Education in Crisis. <https://www.unhcr.org/5b852f8e4.pdf>

<sup>41</sup> New UNESCO Report reveals the strain of refugees on education systems in sub-Saharan Africa. 2018. <https://en.unesco.org/gem-report/sites/gem-report/files/4%20-%20Sub%20Saharan%20Africa%20-%20202019%20GEM%20Report.pdf>

- Lack of coordination by the State with other education partners Existence of barriers that block access to education for refugee children, such as requirements for birth certificates and completion of level documentation<sup>42</sup>; high turnover of qualified teachers and high number of untrained teachers; lack of portable certification or equivalency; congested classrooms; lack of adequate resourcing; and other cultural factors.<sup>43</sup>
- Teachers in displacement settings need adequate training to deliver high standards of education, only 8% of primary school teachers in Dadaab camp and 27% in Kakuma were certified in 2016<sup>44</sup>

#### **40. Recommendation: The government to launch and implement the Kenya Refugee Education Policy**

##### **Roll out of the Curriculum Reform Programme**

41. The Government of Kenya launched a pilot of the Competency Based Curriculum (CBC) in September 2017 based on a needs assessment carried out by Kenya Institute of Curriculum Development (KICD). Currently, the full implementation of CBC is up to grade three (3) and the curriculum development policy (2019) is in place and in the process of implementation.
42. The roll out and implementation of the CBC fails to take the following equity concerns into consideration: Similar quality of education is not accessible to all learners given: low quality or ineffective teacher training on the CBC; Large classes (High PTRs); Learners not having equitable or adequate access to the diversity of learning facilities and aids.<sup>45</sup> These concerns, if not addressed, will likely impact the most poor, marginalized and vulnerable populations even further.
43. Teachers and school managers are not adequately empowered or supported by an appropriate summative evaluation framework to respond to the needs of each learner. Teachers have also expressed concerns around how to efficiently plan for lessons and assess individual learners and lacking sufficient guidance in dealing with learners who exceed or do not meet expectations<sup>46</sup>. Following the pilot, teachers further expressed having challenges with: - handling information that requires digital devices; sufficiently guiding parents on assessment and homework; how to grade according to assessment rubrics; how to change from thematic to an inquiry based approach; large classes; and how to generate key inquiry questions.<sup>47</sup>
44. The quality of implementation will also be negatively impacted by the inadequate number of teachers trained and limited capacity of teachers who have been trained<sup>48</sup>. One survey of 405 schools<sup>49</sup> further indicated a major deficit of CBC teachers, with 77.4 per cent of the sampled lacking at least one CBC trained teacher in one of the grades. The study also showed that most schools have only one trained teacher in the CBC with a learner population of 40-79 pupils per stream and more than one stream from PP1-Grade three. Additionally, training was conducted mainly for 2-3 days over a one

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<sup>42</sup> For example; this includes primary level completion certificate for admission in secondary school.

<sup>43</sup> Ring ,H. R., West , A.R., (2015) Teacher retention in refugee and emergency settings: The state of the literature, The International Education Journal: Comparative Perspectives Vol 14, No 3, 2015, pp. 106-121,

<sup>44</sup> [https://en.unesco.org/gem-report/sites/gem-report/files/GEMR\\_2019-GEMR\\_Summary\\_ENG-v6.pdf](https://en.unesco.org/gem-report/sites/gem-report/files/GEMR_2019-GEMR_Summary_ENG-v6.pdf)

<sup>45</sup> Report On Competence Based Curriculum Activities presented to The National Steering Committee 3rd January 2018, <https://kicd.ac.ke/wp-content/uploads/2018/02/Presentation-on-CBC-Activities-Jan-2018.pdf>

<sup>46</sup> Report On Competence Based Curriculum Activities presented to The National Steering Committee 3rd January 2018, <https://kicd.ac.ke/wp-content/uploads/2018/02/Presentation-on-CBC-Activities-Jan-2018.pdf>

<sup>47</sup> KICD (2018) Report On Competence Based Curriculum Activities Presented To The National Steering Committee 3rd January 2018, <https://kicd.ac.ke/wp-content/uploads/2018/02/Presentation-on-CBC-Activities-Jan-2018.pdf>

<sup>48</sup> KNUT (2019) Teacher Preparedness For The Implementation Of The Competency-Based Curriculum In Pre-primary And Lower Primary Grades In Kenya <http://www.knut.or.ke/index.php/downloads/downloads/KENYA%20CBC%20REPORT%20KNUT%20%20FINAL%2018TH%20MARCH%202019%20FINAL%204.pdf/download>

<sup>49</sup> Ibid.

week period instead of the stipulated five days per week. This is contrary to the stipulated period and also led to the overloading of training content. There are concerns that this will lead to the same challenges experienced with the implementation of the old curriculum and negative impact on learning outcomes.

45. Schools are insufficiently resourced to meet the diverse needs of learners. For example, inadequate provision of resources has been recorded at APBET schools who appear to have been left out of the sensitization programme, yet they serve a large population of children from low socio-economic backgrounds<sup>50</sup>.
46. Inadequate stakeholder engagement as was raised throughout the pilot by various stakeholders prior to the rollout of the curriculum in January 2018. Education stakeholders, who are expected to create awareness on the CBC, do not understand it making it impossible for them to participate in its dissemination and sensitization. Lack of parental engagement was further noted with 60.2% of schools in one study having not inducted parents on implementation of the CBC. Thus parents, who play a significant role in the implementation of the CBC, are not empowered or enabled to contribute to their children's learning outcomes or effectively sensitized to understand their role. Furthermore, a recent summary of the findings from the EGMA Class 2, NASMLA Class 3, SACMEQ IV and MLA Form 2 studies showed that there is inadequate parental involvement in children's learning and that majority (68%) of Class 2 teachers reported that parents did not check their children's homework that <sup>51</sup>.
47. **Recommendation: Ensure adequate teacher training, participation and stakeholder engagement in the roll out of the Competency Based Curriculum.**

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<sup>50</sup> Patrick Vidija (News Article). 2019. Education ministry to roll out Grade 4 curriculum in 2020 - PS Kipsang. <https://www.the-star.co.ke/news/2019-02-26-education-ministry-to-roll-out-grade-4-curriculum-in-2020-ps-kipsang/>

<sup>51</sup>Quality Dialogues. [http://www.education.go.ke/images/GPE\\_PRIEDE/2018-FINAL-DIALOGUES-.pdf](http://www.education.go.ke/images/GPE_PRIEDE/2018-FINAL-DIALOGUES-.pdf)