



REPORT OF THE BREAKFAST MEETING ON THE PROTECTION OF ORPHANED & VULNERABLE CHILDREN'S RIGHTS TO ACCESS FREE PRIMARY EDUCATION

HELD IN NAIROBI, KENYA
30th NOVEMBER, 2010

Prepared by Kenya Legal & Ethical Issues Network
on HIV & AIDS

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ABBREVIATIONS

AAIK	Action AID International Kenya
AIDS	Acquired Immune Deficiency Syndrome
FPE.	Free Primary Education
HIV	Human Immuno-deficiency Virus
KELIN	Kenya Ethical Legal Issues Network on HIV and AIDS
KNCHR.	Kenya National Commission on Human Rights
KNUT	Kenya National Union of Teachers
KTN	Kenya Television Network
MoE	Ministry Of Education
MoGS.	Ministry of Gender and Children Services
NGO	Non-governmental Organisation
OVC	Orphans and Vulnerable Children
PMTCT.	Prevention of mother to child transmission
TSC	Teachers Service Commission
UNAIDS	United Nations Joint Programme on HIV
WOFAK.	Women Fighting AIDS in Kenya

HOSTING INSTITUTIONS

NAME OF HOSTING INSTITUTIONS	KELIN, ACTIONAID INTERNATIONAL KENYA AND WOFAK		
COUNTRY/SITE OF MEETING	LAICO REGENCY HOTEL, NAIROBI, KENYA.		
MEETING	THE PROTECTION OF OVC'S RIGHTS TO ACCESSING FREE PRIMARY EDUCATION		
DATE OF MEETING	30 TH NOVEMBER 2010		
TOTAL NUMBER OF PARTICIPANTS	MALE: 23	FEMALE: 14	TOTAL: 37

1.0 EXECUTIVE SUMMARY

The Kenya Legal and Ethical Issues Network on HIV& AIDS (KELIN) is one of the few organisations in Kenya and East Africa working on legal and human rights issues in relation to health and HIV. KELIN's goal is to undertake advocacy and provide leadership in ensuring an enhanced rights based approach in health and HIV strategies and programmes.

Action AID International Kenya (AAIK) is a branch of Action AID International, which is an anti-poverty agency working in over 40 countries taking sides with the poor people to end poverty and injustice together.

Women Fighting AIDS in Kenya is a non-governmental organisation, established to provide quality health care, support and empowerment to women and children infected and affected, to enable them live positively with HIV.

KELIN entered into an agreement with AAIK to conduct a half day breakfast meeting on the rights of OVC's to access basic education in Kenya. The breakfast meeting was held as the second series special forum that was focusing on the right to access free primary education

The overall objective of this breakfast meeting was to discuss and highlight the challenges that OVCs may be facing with regards to accessing the right to free primary education. The meeting brought together OVC's, care givers, Civil Society Organisations the relevant government officials, non-governmental organisations involved with PLWHAs, and even donor institutions for an all round, all inclusive discussion on how to enhance the realisation of the rights of OVC's with regard to education.

Session 1 commenced at 0756am with introductory remarks from the Session chair Ms Pascaline Kangethe of AAIK. The chair gave a brief overview of the meeting and reminded participants that this meeting was a follow up to the 18th June 2010 meeting where discussions were held with all stakeholders on issues affecting OVCs in relation to inheritance of family property, administration of estates and of acquisition of registration of birth & identification documents and which had so far been very productive in terms of implementation of the meeting's recommendations and action plan.



Ms Pascaline Kangethe of AAIK, chairs session I of the forum.

The chair then invited Ms. Melba Katsivo, the advocacy and training officer of KELIN to make the welcoming remarks

and set out the objective of the meeting. Ms. Katsivo reminded all stakeholders present of their commitments, made in the previous OVC meeting of 1st December 2009, to hold a series of specialized forums that focus on different themes and issues affecting OVC's and the youth. It was out of that commitment that this breakfast meeting was convened.

Ms Katsivo outlined the main objective of this breakfast meeting as being to deliberate on the challenges faced by OVC's with regard to access free primary education, by listening to personal testimonies of OVCs, care givers and giving the government agencies a chance to elaborate on their policies.

The chair then invited Mr. Allan Maleche, KELIN coordinator to make his presentation on the “*General overview of the issues affecting orphans and vulnerable children in the context of HIV and access to free primary education*”.

The objective of Mr. Maleche's presentation was to put into perspective the socio-legal situation obtained amongst care givers and the challenges facing them in so far as access to free primary education is concerned. According to Mr. Maleche, over and above the myriad health issues that OVC's face, there is need to address other challenges that OVC's face such as access to education. He stated that AIDS is more than a health issue and there are so many negative socio-economic problems which a growing number of OVC's experience.

Currently, according to UNAIDS 2010 global estimates, there are about 2.5 million Aids orphans and 2.3 million of them live with HIV in sub-Saharan Africa. As a result, child headed households are a common occurrence and children are no longer children because of HIV. Many are rejected in the wake of high stigma and discrimination associated with HIV by society, relatives, in schools, health care centers e.t.c and they end up in the streets where they are sexually abused and exposed to drugs at a tender age.

According to Mr. Maleche, orphan hood is frequently accompanied by prejudice and increased poverty, which factors further jeopardize children's chances of completing school education and may lead to the adoption of survival strategies that increase vulnerability to HIV. In conclusion, Mr. Maleche's parting shot was;

- If redress is not in the communities?
- Not in the schools?
- Not on the streets?
- Not in the courts ?
- Not in the procedures?

Whom shall we send?



Mr. Allan Maleche of KELIN makes his presentation at the forum.

TESTIMONIES

At 0815 am, the chair invited **personal testimonies** from care-givers and a select group of OVC's.

1. MORGAN ODHIAMBO

According to Master Morgan Odhiambo, a class seven (7) pupil at Imara Primary school and who is under the care of MAXFACTA, free primary education is not free after all! He stated that he has to pay tuition fee and lunch fee and that in one class, there are a total of 150 pupils. He shared his fears of ever disclosing his HIV status to his colleagues and teachers as this would lead to discrimination. According to Morgan, he would rather keep his status confidential to avoid stigma from fellow pupils.

2. ELIZABETH-CARE GIVER (MAXFACTA).

According to Ms. Elizabeth, free primary education is not free. In the schools where the children under her care are enrolled, they are required to pay five thousand Kenya shillings (Kshs 5000/-) during enrollment, buy a desk or pay an equivalent value, buy uniform and yet these are not compulsory, pay monthly tuition fee of two hundred Kenya Shillings (200/-) per child, pay a monthly feeding programme fee of seventy Kenya Shillings (70/-) per child, buy exercise books, buy sanitary towels, pay KCSE exam fee for candidates and the necessary examination materials.

All these expenses, she stated, overburden them as care givers since their donors limit their education funding to the deficit supposedly left by government in its free primary education programme. According to Elizabeth, since donors are informed that primary education is free, they do not meet some of these expenses. In addition, the daily meal of maize and beans cannot properly meet the dietary requirements of OVC's infected by HIV and yet teachers still don't allow children to carry food with them to school.

Elizabeth equally voiced Morgan Odhiambo's concerns on stigma. She shared the difficulties faced by Morgan in taking his three daily doses of ARV's in school due to fears of stigmatization and discrimination.

According to Elizabeth, teachers need to be counseled and educated to be more sensitive to the needs of OVC's with HIV.



Ms. Elizabeth Atieno of Maxfacta and Master Morgan Odhiambo share their experience

3. SHARON AKINYI

Sharon Akinyi is a standard seven pupil at KICOSHEP Primary school. She was taken to the school by her aunt after her parent's demise in 2001 from AIDS. She stated that they (orphans at KICOSHEP) lack a lot of school materials including books and school fees which are unaffordable due to lack of funds.

4. HELLEN JASIANG'A - WOFAK

According to Ms. Hellen Jasiang'a, WOFAK supports only the most vulnerable of the orphaned children and mostly those infected with HIV. She stated that most schools can only afford to feed children with meal of maize and beans ('githeri') yet OVC's infected by HIV require a special diet. She stated that WOFAK provides vocational training for orphans, counselling, provides text books and food baskets to the most vulnerable children .

Hellen stated that donors do not pay for free primary education and more often than not, they require guardians to obtain government subsidies. She outlined the following as the main challenges they face with free primary education;

- Complex enrolment processes in public schools compared to community schools.
- Fewer schools compared to number of children hence forcing children to walk long distances to go to school. This greatly impacts on children's concentration in class.
- Guardians are still required to purchase uniform, Desks, Exercise / Text books etc
- Lack of close monitoring for the children with special needs due to the large numbers in a class. Counseling and guidance for OVCs cannot be achieved due to the large numbers.

According to Hellen, the government needs to focus on 'the needy of the neediest'.

The chair then invited Mr. Oliver Munguti- Aids Control Unit (Teachers Service Commission).

Mr Munguti gave the TSC's perspective on HIV and access to education. According to Mr. Munguti, HIV & AIDS has impacted heavily on teachers as much as other members of the public with the result of children being orphaned and forced to drop out of school, stay home and head households because of financial strains. Such children are also vulnerable to alcohol abuse and other abuses. There is no one to shield them from these. This is one of the reasons the TSC formed an AIDS Control Unit which helps tackle some of these challenges.

From a teacher's perspective, Mr Munguti highlighted the following as some of the challenges faced by OVC's in schools around the country

- Peer pressure that lead to drug use
- Inability by parents and guardians to provide basic needs e.g. uniforms, sanitary pads e.t.c
- Abuse of orphans and stigmatization by fellow pupils and teachers where they reveal their status and in cases where they report abuse, they have to go back to same abusers in class.
- No adequate time for counselling
- Young HIV positive pupils don't understand why they have to continually take drugs daily and so the temptation is to avoid and then adherence becomes a problem.

According to Mr. Munguti our educational institutions also contribute to the above challenges. He stated that school bursaries/ grants are not prudently managed, guidance and counselling departments are not efficient/functional, and there are no mentorship networks for emotional, physical and psycho-social support, the educational curriculum does not equip OVC's with important life skills in areas such as decision making, communication, assertiveness, negotiation and leadership.



Mr. Oliver Munguti, of AIDS Control Unit, TSC makes his presentation

The chair then invited Ms. Jemimah Nindo, the National treasurer of KENEPOTE who added her voice to Mr. Munguti's presentation. She called for more effective post adolescent sexual education for teachers to enable them tackle the issues more openly and without discrimination. This, she said, would help create a free environment for children to talk freely about their status

This session ended at 09.21 am

Ms. Umra Omar, of Open Society Initiative East Africa (OSIEA), chaired session II. The chair invited the representative of the Ministry of gender and social services, Mr Madahana Mbaya to make his presentation. In Mr. Mbaya's presentation the following salient issues were highlighted;

- The cash transfer office started in 2004 to provide interventions on how to assist children orphaned by HIV & AIDS
- The office deals with children aged between 0-18 years and focuses on four (4) main areas of intervention i.e. education, medical services, birth and death registration of children and nutritional support.
- The office gives Kshs 1,500 per family per month but which is disbursed bi-monthly (Kshs 3000/-). Though this is not enough, this is what the office can afford as per its budgetary allocation but that the office was seeking partnerships with development partners to improve.
- The challenge is that though the money is meant only for OVC's , most of the time if not all the time, this money is used on the entire family coupled with Increasing number of orphans and vulnerable children with a large number of needy cases yet to be reached.
- Most care givers the office works with are old and elderly and are unable to take good care of OVC's.
- The office works with locational OVC committees to ensure children are not sent away from school.
- The office currently works in 60 districts targeting over 114, 000 to be scaled to over 150,000 enrolled households by 2012 and beyond. A household has approximately 3.5 OVC's that are being supported by this programme.

At 0949 am the chair invited the representative of the Permanent Secretary, Ministry of education Mr. Philip Yator to make his presentation and to read the Permanent Secretary's speech.

Mr. Yator sought to first correct the misconceptions highlighted in the course of the presentations of session 1. He highlighted the following;

- That the school feeding programme is not free *for all* children in the country. The WFP only feeds certain districts which they feel are arid and semi arid and a few urban slums. The rest have to organize for their own school based feeding programme.
- Care givers need to seek the services and assistance of Ministry officials in their respective jurisdictions when taking OVC's to schools to facilitate better care and protection of the children by otherwise difficult teachers.
- Tuition fee is illegal. The permanent Secretary and Director of education have written numerous letters to school heads illegalizing it but parents keep insisting on it.
- Text books and exercise books in Primary schools ought not to be bought. They ought to be distributed at the Ministry's approved ratio but most school administrators misappropriate funds meant for books. The Ministry is contemplating advertising all disbursements made to each school to improve on accountability.
- A vote head has been featured for sanitary towels to ensure the girl child has a constant supply of the same for use throughout the year.

Mr Yator then read the Permanent Secretary's speech. In the said speech, the following salient issues were highlighted from the speech;

- Efforts to provide FPE to every child in Kenya is a priority for the government

- Though there has been increased enrolment of children into schools, a critical challenge remains on the education of children with special needs, orphans, most vulnerable and hard to reach children including children in slums
- The number of children orphaned by HIV & AIDS continues to rise and this poses great challenge to the education sector. However the MoE's current strategic plan continues to lay emphasis on the need to sustain implementation of FPE and free day secondary education for special needs learners and those orphaned through HIV & AIDS .
- MoE with the support of World Bank has recently disbursed Kshs 1.67 billion to cater for needs of the most vulnerable children in schools.
- The responsibility for caring and educating OVC's orphaned by HIV cannot be the preserve of government alone. A concerted effort from communities, organizations and agencies is required.
- There is need to inculcate responsibility in children because the sexual decisions they make when under the influence of alcohol and drugs impact them for the rest of their lives.
- The Ministry is committed to assisting orphaned children and most vulnerable children to attend and complete their education in an enabling environment
- Education is a basic human right and no child should be left out of it.



Mr. Madahana Mbaya of the Ministry of Gender and Children Services and Mr. Philip Yator of the Ministry of Education make their presentations.

(A copy of the speech is annexed to this report).

The chair cautioned against playing blame games between caregivers and duty bearers because then children are left trapped in between.



Ms. Umra Omar of Open Society Initiative East Africa (OSIEA) chairs session II of the forum

Session II ended at 1014am.

Session III, brainstormed on how to address the needs and challenges raised during session I & II and how to complement government work, and the way forward after all is said and done.



Mr. Yator of MOE, Mr. Girmay of UNAIDS and Sr. Owens of Nyumbani Children's home listen to the speaker.

The chair began by suggesting the need to consider the moon cup¹ (alternative to sanitary towels) which though costly, is a one off investment for ten (10) years. This she said can help address the problem of girls having to miss school for a whole term in a year because they lack sanitary pads.

At this session the following important recommendations were floated for action.

- While there is clearly need for a clear guideline on parent and government roles in order to eliminate blame

¹ The Mooncup is a reusable menstrual cup, around two inches long and made from soft medical grade silicone. It is worn internally a lot lower than a tampon but, while tampons and pads absorb menstrual fluid, the Mooncup collects it. This means it doesn't cause dryness or irritation, and also that it collects far more (three times as much as a 'super-absorbent' tampon!). Because the Mooncup is reusable, you only need one so it saves you money and helps the environment, too. See <http://www.mooncup.co.uk/about-the-mooncup.html>

games, the MoE bears the lead role and responsibility in the provision of education for OVCs.

- There should be harmonization of political rhetoric with resultant government policies for clarity.
- The Ministry of education should take measures aimed at enhancing the quality of education to avoid insistence by parents to pay tuition fee for extra tuition
- There is still a lot of ignorance on the part of teachers on HIV. There is need to conduct public awareness campaigns to sensitize teachers on how to properly care for OVCs infected by HIV.
- Bursary and scholarship allocation criteria should be reviewed for OVCs because the *top performance* criteria is a challenge to them owing to the difficulties they face compared to other children.
- MoE should share with stakeholders all its policies for meaningful and well informed discussions.
- NACC should partner with Ministry of education to influence curriculum in schools on HIV & AIDS education. This can be done under the auspices of section 4 of the HIV and AIDS Prevention and Control Act, Act No. 14 of 2006.
- The FPE budgetary allocations should be based on scientific data and not unclear political pronouncements.
- MoE should open up and partner with other stakeholders including NACC to assist in the implementation of its policies affecting OVCs infected by HIV.
- Parents should be more proactive and should disclose abuses
- Agencies and NGOs seeking to work on HIV and OVC related issues should seek linkages with MoE before setting up to facilitate proper resource allocation and to avoid duplication of services in the same areas.
- Caregivers should make good use of the new impetus provided by the new constitution to improve on the rights of OVCs and to hold duty bearers accountable.

The session ended at 11.18 am with a vote of thanks from Ms. Melba Katsivo.



Ms. Jamieson and Ms. Obul of NEPHAK keenly listen to the proceedings.

2.0 SUMMARY OF WORKSHOP SESSIONS

2.1 SESSION I: EXPERIENCES IN THE COMMUNITY

CHAIR: PASCALINE KANGETHE (AAIK)

This session gave participants a brief background of the breakfast meeting and highlighted its key objectives. Participants were appraised on the core issues the meeting sought to address, personal testimonies from care-givers and OVCs were shared and a few members of civil society were invited to give their perspectives on the issues as well. This set the stage for a more practical and informed discussion with duty bearers in the next session. The presenters in this session included Mr. Allan Maleche, Ms Hellen Jasiang'a, Mr. Oliver Munguti, and Ms Jemimah Nindo.



Sr Mary Owens of Nyumbani Children's Home, Ms. Nindo, Mr. Munguti and Ms. Makonya of TSC listen to the speaker.

2.2 SESSION II: KNOWING GOVERNMENT POLICIES AND PROCEDURES

CHAIR: UMRA OMAR (OSIEA)

The aim of this session was to hear the government's positions on matters relating to access to basic education by OVCs. The objectives of this was two fold i.e. to ascertain as much as possible how effectively the free primary education in Kenya is and generally how effectively it is toward OVCs and to come up with ideas on what can be done to improve the current position. The presenters in this session included Mr. Philip Yator and Mr. Madahana Mbaya.



Mr. Shikanga of the Kenya National Association of Parents contributes to the way forward

2.3 SESSION III: PLENARY DISCUSSIONS ON WAY FORWARD.

CHAIR: ANNE NGUGI (COMMISSIONER KNCHR)

This session mainly sought to crystallize all the various points of action put forth by the various actors. All participants were requested to contribute to the recommendations from the issues they had gathered from the discussions.



Commissioner Anne Ngugi of KNCHR chairs Session III.

SUMMARY OF RECOMMENDATIONS

- While there is clearly need for a clear guideline on parent and government roles in order to eliminate blame games, the MoE bears the lead role and responsibility in the provision of education for OVCs.
- There should be harmonization of political rhetoric with resultant government policies for clarity and accountability.

- The Ministry of education should take measures aimed at enhancing the quality of education to avoid insistence by parents to pay tuition fee for extra tuition
- There is still a lot of ignorance on the part of teachers on HIV. There is need to conduct public awareness campaigns to sensitize teachers on how to properly care for OVCs infected by HIV.
- Bursary and scholarship allocation criteria should be reviewed for OVCs because the top performance criteria is a challenge to them owing to the difficulties they face compared to other children.
- MoE should share with stakeholders all its policies for meaningful and well informed discussions.
- NACC should partner with Ministry of education to influence curriculum in schools on HIV & AIDS education. This can be done under the auspices of section 4 of the HIV and AIDS Prevention and Control Act (Act No. 14 of 2006).
- The FPE budgetary allocations should be based on scientific data and not unclear political pronouncements.
- MoE should open up and partner with other stakeholders to assist in the implementation of its policies affecting OVCs infected by HIV.
- Parents should be more proactive and should disclose abuses.
- Agencies and NGOs seeking to work on HIV and OVC related issues should seek linkages with the Ministry before setting up to facilitate proper resource allocation and to avoid duplication of services in the same areas.
- Caregivers should make good use of the new impetus provided by the new constitution to improve on the rights of OVCs and to hold duty bearers accountable.

UNDERTAKINGS

- Mr. Mbaya gave an undertaking to send soft copy policies. He also stated that the MoGS has officers at the grassroots who work with schools and who can be approached to sensitize teachers and pupils on HIV & AIDS
- AAIK & KELIN made a commitment to ensure Sharon gets her birth certificate.



Ms. Melba Katindi of KELIN gives the vote of thanks

3.0 METHODOLOGY

The meeting was conducted through participatory and experiential learning processes including structured power point presentations, motion audio-visual presentations and case studies. KELIN also undertook to forward the outcome of the meeting including all recommendations on the way forward in the form of CD's.

APPENDIX I: PROGRAMME




Time	Session	Chair/Presenter	Session Objective
7:00 am to 7:30 am	Registration and Breakfast		
SESSION I: EXPERIENCES IN THE COMMUNITY			
		Ambrose Rachier: Chairman, HIV Tribunal	To hear experiences of orphans, their carers and organizations working in community with OVC
7:30 am to 7:40 am	Welcome Remarks and Objective of Meeting	Allan Maleche (KELIN)	
7:40 am to 7:50 am	General Overview of the Issues Affecting Orphans and Vulnerable Children in the Context of HIV	Ms. Catherine Muyeka Mumma (KELIN)	
7:50 am to 8.35 am	Personal Testimonies <ul style="list-style-type: none"> Grandmother carer Personal Testimony Youth (Identification) Personal Testimony Orphan (Access to property) 15 minute video 	Allan Maleche: KELIN Programme Coordinator Joy Obuya: KELIN Communication Officer	
8.35 am – 9.15 am	Experiences on working with OVC <ul style="list-style-type: none"> Nyumbani Children's Home/Children of God Relief Institute Children's Legal Action Network (CLAN) The Children's Foundation (CRADLE) Women Fighting AIDS in Kenya (WOFAK) 	Reverend Sr. Mary Owens (IBVM) Executive Director: Nyumbani CLAN Representative Lillian Njeru: Legal Aid Officer Ms. Dorothy Onyango: Executive Director, WOFAK	
9:15 am to 9:25 am	<i>"The Link Between Human Rights Violations and HIV - The Context of OVC"</i>	Ms. Jean Kamau: County Director, Action Aid International - Kenya	
SESSION II: KNOWING GOVERNMENT POLICIES AND PROCEDURES			
		Chair: Hon. Millie Odhiambo: MP and Chairperson on Kenya Parliamentary Caucus on Children	To hear the government positions on matters relating to registration of births, acquisition of Identification documents and access to property by OVC: 1. Are the procedures friendly to children? 2. What can be done to improve the position?
9:25 am to 10:05 am	<ul style="list-style-type: none"> <i>"Structures and Procedures Relating To Registration Of Birth For and Acquisition of Identification Documents for Orphans and Vulnerable Children (OVC)"</i> <i>"Ongoing Legal Reforms on Matters Affecting The Rights Of Orphaned And Vulnerable Children To Registration, Identity An Access To Family Property Birth Registration And Access To Family Property For OVC"</i> <i>"Towards a comprehensive approach on the protection of children's rights- the need for children to access all their civil, economic , social and cultural rights- difficulties in acquiring birth registration and access to family property for OVC"</i> 	Mr. James O. Opundo: Ministry of State for Immigration and Registration of Persons Commissioner Nancy Baraza: Vice Chairperson, Law Reform Commission of Kenya Prof. Jacqueline Oduol: Secretary for Children's Affairs, Ministry of Gender and Children Affairs	
10.05 am - 10.10 am	Health Break: Reading the Stories of Orphans - Ms. Ruth Masha, Action Aid International - Kenya		
10:05 am - 10:30 am	KEYNOTE ADDRESS: "The Structure and Procedures on accessing funds with the Public Trustee: -How?- for orphaned and vulnerable children "	Hon. S. Amos Wako, E.G.H., E.B.S., SC, MP, Attorney General of the Republic of Kenya	
Tea Break			
SESSION III: PLENARY DISCUSSION ON WAY FORWARD			
		Chair: Commissioner Winnie Lichuma: Kenya National Commission on Human Rights (KNCHR)	Discussion of a few points of actions by the various actors.
10:30 am to 11:30 am	<ul style="list-style-type: none"> Way Forward Strategic Discussion of implementation of way forward and plan of action by various Stakeholders 		

APPENDIX II: LIST OF PARTICIPANTS

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