



## **Untangling the Web: Resolving Inconsistencies in Kenya's Legal Framework on Child Employment and Child Domestic Work.**



## **Preface**

Amka Africa Justice Initiative, an independent non-profit organization registered in Kenya, is dedicated to promoting access to justice for the poor, minority, and marginalized groups across the country and the broader African continent. Through collaborative efforts with university legal clinics and grassroots organizations, we strive to empower communities and address systemic inequalities that impede the realization of fundamental rights and social justice.

One of the critical areas of our work is addressing the exploitation of children through various forms of labor, a pervasive issue that deprives countless young lives of their basic rights, education, and healthy development. The employment of children, particularly in hazardous or exploitative conditions, is a multifaceted challenge that requires a comprehensive understanding of the underlying factors, legal frameworks, and societal dynamics.

Recognizing the pivotal role of research in driving evidence-based advocacy and effecting meaningful change, Amka Africa has undertaken this comprehensive study on child employment in Kenya. Through rigorous data collection, analysis, and engagement with diverse stakeholders, we aim to shed light on the complexities surrounding this issue, unravel the intricacies of the legal landscape, and identify opportunities for policy reforms and interventions.

Through this research, we aspire to contribute to the broader discourse on child protection, foster awareness, and catalyze transformative actions that safeguard the rights and dignity of every child in Kenya. Ultimately, our goal is to empower communities, strengthen legal frameworks, and pave the way for a society where every child can thrive, learn, and realize their full potential, free from the shackles of exploitation and discrimination.

## **Acknowledgments**

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Sincere gratitude is extended to Veronica Mwangi, for her expertise and guidance which was instrumental in shaping the execution of this research.

We extend our heartfelt thanks to all the government officers, civil society organizations, survivors of child employment, private sector actors and members of the public who generously shared their insights, experiences, and perspectives on child employment in Kenya. Indeed, your contribution has been instrumental in informing the analysis and recommendations of this study.



**Milka Wahu**  
**Team leader & Founder**  
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## **Executive Summary**

The study addresses the complexities of child employment particularly child domestic work in Kenya. It focuses on the inconsistencies within the existing legal framework such as the Children Act (Cap 141), Employment Act (Cap 226), Basic Education Act (Cap 211) and the Counter Trafficking in Persons Act (Cap 61) among others. These inconsistencies create ambiguity, hindering effective implementation and undermining the protection of children from exploitation and abuse. Despite efforts to regulate child employment, gaps and contradictions persist within and between these laws, policies, and institutional practices necessitating a comprehensive examination and potential reforms.

Perceiving the gap, Amka Africa Justice Initiative set out to undertake a study that adopted a mixed-methods approach and drew its participants from Nairobi City County as the main county of the research with additional contributions of a few stakeholders from Busia and Mombasa County. The study aimed to identify, clarify, and address these inconsistencies. This included desk reviews, key informant interviews, and public surveys, providing valuable insights into the demographic characteristics of participants and their perspectives on various aspects of child employment.

The findings revealed a diverse range of opinions on the appropriate age for child employment, underscoring the need for consensus and clarity in defining the age threshold. While there was a general awareness of child labour laws among participants, there were concerns about the knowledge of authorities mandated to monitor child employment and the inconsistencies of their regulatory frameworks. Many participants perceived existing laws as inadequate in protecting children in employment resulting in gaps that expose children to child labour and other forms of exploitation.

In addition, a majority identified child domestic work (CDW) as one of the key sectors where child employment is rampant in addition to other informal sectors namely; selling on the street (hawking) snacks, food and housewares, farming, Jua Kali (collection of plastic bottles and steel metal for recycling sale), construction site and other casual jobs. In other words, a majority cited inconsistencies and gaps that heighten a child's vulnerability to exploitation and harm whether the work is paid or unpaid.

The study highlights several key challenges, including interference with a child's growth, education, exposure to exploitation, and hazards which impacts negatively on the overall well-being of the affected child. These challenges underscore the urgent need for comprehensive policy, legal, institutional, and administrative reforms; to address the inconsistencies and ensure adequate protection for children in employment and alternative support to vulnerable children.

To address these challenges, the study has proposed a set of recommendations; which include:

1. Review and harmonization of existing legislation to enhance the protection of CDW and children in employment,
2. Strengthening of enforcement mechanisms to combat poverty-driven reliance on child employment,
3. Increase public awareness campaigns to educate the public and key stakeholders on child rights laws, and the effects of child labour.
4. Strengthened multi-sectoral collaboration and holistic approaches to regulate child employment,
5. Reinforcing monitoring and accountability mechanisms to end child domestic work, child labour, and abuses and,
6. Advocate for prioritization of social protection support for vulnerable children through the ultra-poor poverty graduation model to cure generational cycles of poverty among other root causes of reliance on child employment.

In conclusion, the report makes a clarion call to all stakeholders to work together and ensure that 'No child is left behind' in harmful effects of reliance on child domestic work and child labour. It calls upon the Government and stakeholders to establish well-resourced accessible, accountable reporting mechanisms, case follow-up, and trends reporting to strengthen preventive measures on emerging trends in child domestic work and child labour camouflaged as child employment.

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# Chapter 1: Introduction

## 1.1 Background

Child employment, child domestic work, and child labour are distinct yet interconnected concepts that significantly impact children's lives worldwide. *Child work* encompasses light household chores and activities that are often beneficial and educational, taking place in a nurturing environment under the supervision of parents or guardians. *Domestic work*, typically involving household tasks like cleaning, cooking, and childcare, is not inherently harmful. However, *Child Domestic Work* (CDW) can become exploitative and harmful under certain conditions.

In contrast, *child labour* involves tasks that are harmful, exploitative, and detrimental to a child's development and education. When a child is subjected to long hours, hazardous tasks, violence, neglect, or other abusive circumstances, this form of work is classified as domestic servitude, impairing the child's physical and mental well-being.

Recent statistics highlight the prevalence of domestic workers globally, with women constituting 76% of the workforce. In developing countries, 82% of domestic workers are employed in the informal sector,<sup>1</sup> with minimal legal protection. According to the International Labour Organization (ILO), there are approximately 53 million domestic workers worldwide, including 17 million children aged 5-17 years. The rise in child domestic workers indicates a growing concern about child labour within this sector. Child domestic work, as a subset of child labour, robs children of their rights, education, and potential. Despite progress in reducing child labour, recent trends show an alarming increase. The ILO's 2020 report <sup>2</sup>reveals that 160 million children are engaged in child labour, with 79 million involved in hazardous work. Factors such as the COVID-19 pandemic, climate change, and economic hardships have exacerbated the situation, pushing additional millions of children into child labour.

UNICEF reports a disturbing increase of 8.4 million child labour cases between 2017 and 2020, reversing previous gains.<sup>3</sup> The number of children aged 5 to 17 in hazardous work has risen by 6.5 million since 2016, highlighting the urgent need for concerted global efforts to combat child labour and protect children's rights.<sup>4</sup>

In Africa, it has been a long-standing tradition for children to participate in household chores as part of their upbringing, socialization, and preparation for future employment. However, this practice has evolved from being a form of training or

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<sup>1</sup> Women and Men in the Informal Economy – A Statistical Brief by WIEGO & ILO. 2019. <https://www.ilo.org/media/408286/download>

<sup>2</sup> ILO's World Employment and Social Outlook – Trends 2020. [https://www.ilo.org/sites/default/files/wcmsp5/groups/public/@dgreports/@dcomm/@publ/documents/publication/wcms\\_734455.pdf](https://www.ilo.org/sites/default/files/wcmsp5/groups/public/@dgreports/@dcomm/@publ/documents/publication/wcms_734455.pdf)

<sup>3</sup> Child Labour: Global estimates 2020, trends and the road forward, 2021 by UNICEF. <https://data.unicef.org/resources/child-labour-2020-global-estimates-trends-and-the-road-forward/>

<sup>4</sup> Ibid 3.

apprenticeship to unregulated employment, often involving exploitative and hazardous work that impedes a child's growth and well-being. Africa has one of the highest rates of economically active children, with about 41% of children engaged in work. Over 30% of African children aged 10 to 14 are employed in the agricultural sector.<sup>5</sup>

According to World Vision, nearly 1 in 10 children worldwide were involved in child labor in 2020, engaging in jobs that deprived them of education, jeopardized their well-being, and violated their basic rights. In 2020, 1 in 3 children engaged in child labor were out of school, with Sub-Saharan Africa reporting the highest number of child laborers at 86.6 million. Approximately 112 million children (70%) worked in agriculture, including farming and livestock herding.

In Kenya, UNICEF reported that 1.13 million primary school-aged children (6 to 13 years old) were out of school in 2020, making them vulnerable to child labour in the absence of proper support. Factors contributing to school dropout and child employment include extreme poverty, broken families, socio-cultural factors, economic shocks, inadequate social protection measures, insufficient laws and enforcement mechanisms, and corruption.

According to the Kenya National Bureau of Statistics (KNBS), approximately 1.3 million children are engaged in child labour<sup>6</sup>, mainly in arid and semi-arid regions. These children perform various tasks, including sand harvesting, herding, and domestic work; are subjected to harmful cultural practices like female genital mutilation (FGM) and early marriages.

A broader study across African countries revealed that about 1.9 million children in Kenya aged 5-17 are working, with 3.2% having secondary education and 12.7% with no formal schooling. The Kenya Housing and Population Census (KHPC), 2019 data also showed that 165,059 children aged 5-13 had dropped out of school early, and 2,075,304 had never attended school. Further, the 2019 Violence Against Children Survey (VACS)<sup>7</sup> survey established that about 3 in 5 males and 1 in 3 females worked for money or other payment in the past twelve months of the survey.

In a study Commissioned by Freedom Fund, the 2023 report found that 'caregivers send children from economically vulnerable households to engage in domestic work as part of supporting the household income. Trusted community structures play a crucial role in the recruitment of child domestic workers. Further child domestic

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<sup>5</sup> Child labour in Africa, ILO. <https://www.ilo.org/media/313806/download>

<sup>6</sup> Let's end child labour in Kenya, 2021.UNICEF. <https://www.unicef.org/kenya/stories/lets-end-child-labour-kenya>

<sup>7</sup> Child-Friendly-VAC, 2019 Report.2019.



workers as young as 7 years old are engaged in unregulated child domestic work for more hours and with no pay since the caregivers are the recipients of their income.<sup>8</sup> Beatrice (2013)<sup>9</sup> highlighted that child labour in Kenya is influenced by various factors at the child, household, and community levels, varying by region and sector. Combating child labour requires improving access to education, ensuring school retention, facilitating smooth transitions to secondary and tertiary education, and implementing strong social protection policies for vulnerable children and families. In Busia County, a study found that children from vulnerable families are highly exploited, especially by out-grower farmers due to poor enforcement of labour laws.<sup>10</sup> Economically challenged families often send their children to work as casual labourers to supplement the family income, particularly in sugar cane farming, where child labour is preferred for its low cost and ease of manipulation.

In Kenya, addressing child work is challenging due to social norms encouraging children to work for learning purposes, often under parental or guardian supervision. However, this can be abused, leading to sanctioned child labour through kinship relations. Other contributing factors include economic hardships, the impact of COVID-19, insufficient funding for labour law enforcement, fragmented policies and inadequate social protection programs. According to the 2019 Violence Against Children Survey (VACS), violence against children is usually caused by the people who are known and trusted by children such as Employers in the case of child labour.

## **1.2 Statement of the Problem**

Despite the existence of various legal instruments in Kenya, such as the Children Act (Cap 141), Employment Act (Cap 226), Basic Education Act (Cap 211) and the Counter Trafficking in Persons Act (Cap 61), aimed at protecting children's rights and regulating their involvement in work. Significant inconsistencies remain due to fragmented provisions within these laws on child employment particularly child domestic work (CDW) in Kenya. These legal inconsistencies create ambiguity and hinder effective implementation and enforcement mechanisms consequently undermining the protection of children engaged in employment or domestic work from exploitation and abuse.

Despite efforts made by the Kenyan Government to align the 2022 Children Act (Cap 141) Section 18 'Protection from child labour' provisions to the Employment Act (Cap 226) part VII provisions on 'the Protection of Children' as well as ratification of key ILO Conventions on minimum age and protection from child labour;<sup>11</sup> there still exist gaps

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<sup>8</sup> HIDDEN IN PLAIN SIGHT Shining a light on the experiences of child domestic workers in Kenya Report-2023 Freedom Fund.

<sup>9</sup> Beatrice W. Maina (2013): Child Labour and Its Determinants in Kenya. KIPPRA Discussion Paper No. 157 2013.

<sup>10</sup> Kenya child labour baseline survey: Busia district report, 2011.

<sup>11</sup> KNCHR Policy Brief: Role of Duty of the Government in Promoting and protecting Labor rights in the context of the COVID-19 Pandemic 2020. <https://www.knchr.org/Portals/0/KNCHR%20Advisory%20on%20Labour.pdf>

and fragmentation in the Kenyan legal frameworks that require a coordinated approach to harmonize them.

Certainly, this is evident in the provisions of section 18 (4) of the Children Act which states, “ *The Cabinet Secretary responsible for matters relating to labour shall, within one year of the commencement of this Act, in consultation with the Cabinet Secretaries responsible for matters relating to children affairs and education, make Regulations prescribing the terms and conditions of work and the kind of work that may be engaged in by children in the following age categories— (a) children who have attained the age of thirteen but have not attained the age of sixteen years; and (b) children who have attained the age of sixteen but have not attained the age of eighteen years.*”

The lack of a harmonized legal framework has led to a fragmented approach to addressing child employment and child domestic work, leaving children vulnerable to various forms of exploitation, including excessive working hours, hazardous tasks, violence, and neglect.

Moreover, the inconsistencies in the legal framework have hindered the development and implementation of comprehensive policies and programs to address the root causes of child employment and domestic work to strengthen child safeguards, access to education, social protection, and well-regulated child work that is beneficial to the child’s growth, development and learning. By addressing the inconsistencies in the legal framework, unearthing enforcement challenges, and providing a comprehensive policy brief; this study will contribute to the development of a robust and harmonized legal and policy environment that prioritizes the protection of children’s rights, promote their well-being, and create pathways for their empowerment, access to education and reliable social protection assistance.

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

The primary objective of this study is to identify and clarify the inconsistencies between the Children Act (Cap 141), the Employment Act (Cap 226), the Basic Education Act (Cap211), the Counter Trafficking in Persons Act (Cap 61) and related laws and policies regarding child employment in Kenya. Specifically, the study aims to:

1. Identify inconsistencies in legal and policy frameworks concerning child employment and child domestic work in Kenya.
2. Analyze judicial decisions and best practices related to child employment and child domestic work in Kenya and other countries.
3. Highlight policies and laws that need review or implementation to advocate for reforms that improve the conditions of child domestic workers.

### **1.4 Study Methodology**

This exploratory study was conducted in three counties—Nairobi City County, Busia County, and Mombasa County—where child labour is notably prevalent. A mixed-

method approach was employed, incorporating desk reviews, key informant interviews and public surveys. Maximum variation purposive sampling ensured the inclusion of participants with diverse and relevant experiences, enabling a comprehensive exploration of the topic.

#### **1.4.1. Desk Review**

Secondary data collection involved a rigorous desk review using an exploratory framework to identify and clarify inconsistencies between the Children Act, the Employment Act, the Basic Education Act, and related laws and policies regarding child employment in Kenya. This review encompassed various data sources, such as laws, policies, strategies, guidelines, and case studies.

#### **1.4.2 Key Informant Interviews**

Primary data was collected through 14 key informant interviews, conducted using structured guides. Participants were drawn from various organizations and institutions, including the Ministry of Labour and Social Protection, the Ministry of Interior and Coordination of National Government, the Kenya National Commission on Human Rights, the International Labour Organization, Amka Africa Justice Initiative, Child Helpline Kenya, Terre des Hommes (tdh) Kenya, Trace Kenya, and Kudheihia. The selection targeted children officers, government officials, and representatives from civil society organizations with daily experience of working on child protection which includes monitoring child employment, combating child labour and child trafficking. This approach aimed to supplement the firsthand experiences of children involved in labour and identify existing gaps in the sector.

Further during the validation forum, 3 interviews were conducted to capture the voices of the survivors of the child domestic workers to complement the already collected data from KII.

#### **1.4.3 Public Survey**

A public survey was conducted to supplement the findings from stakeholders in Nairobi City County, Busia County, and Mombasa County. The survey tool gathered views from the 79 general public on the issue of child employment, allowing for a comprehensive capture of perspectives from both duty bearers and right holders.

## Chapter 2: Analysis of Kenya's Legal Framework on Child employment and child domestic work

### 2.1 International and Regional Legal Frameworks

The issue of child employment, child domestic work and child labour is addressed by various international and regional legal instruments, which provide a comprehensive framework for safeguarding rights of every child, protecting children from child labour and other harmful practices. Most of these legal frameworks have been ratified and others domesticated by the Government of Kenya. These instruments establish standards, guidelines, and obligations for Kenya to ensure that children are protected from exploitative and harmful forms of work.

Legal framework	Objective	Kenya's Status	Convention/Treaty body monitoring Institution
United Nations Convention on the Rights of the Child (UNCRC), 1989	Outlines rights of every child globally and extends protection to every child from economic exploitation and from performing work that is hazardous to his/her life and development. (Article 32)	Ratified in 1990	UN Committee on the Rights of the Child
African Charter on the Rights and welfare of the child (ACRWC)-1990	Outlines the rights of every child in Africa. Calls upon state parties to ensure protection of children from all forms of economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's physical, mental, spiritual, moral or social development- Article 15. Further, it requires state parties to set the minimum ages of admission of children to employment and provide other minimum conditions meant to safeguard the welfare of children through constitutional, legislative and administrative frameworks.	Ratified in 2000	The African Committee of Experts on the Rights and Welfare of the Child (ACERWC)
=	C138 seeks to abolish child labour and calls upon states to develop national policies to establish minimum age for entry into work consistent with a child's physical and mental development. It also requires	Ratified in 1979	International Labour Organization (ILO)

	<p>that States align the minimum age of compulsory education to the minimum age of work. It establishes 15 as the minimum age for work in general.</p> <p>Article 3 of the Convention prescribes the minimum age for hazardous work to be not less than 18 years. Hazardous work is defined as work that, due to its nature or the circumstances in which it is carried out, is likely to jeopardize children's health, safety or morals.</p>		
ILO Convention 182 (Worst Forms of Child Labour) of 1999	Defines the worst forms of Child Labour. Calls upon state parties to put in place measures to protect children from worst forms of child labour by among other things, outlining works that have the likelihood of harming the health, safety or morals of children.	Ratified in 2001	ILO
UNCRC Optional Protocol on Armed Conflict	Prohibit the conscription into the military of children under the age of 18. This is aimed at protecting children from being recruited into the armed forces and their participation in hostilities.	Ratified in 2002	UN Committee on the Rights of the Child
UNCRC Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography	Requires State parties to parties to protect the rights and interests of child victims of trafficking, child prostitution and child pornography, child labour and especially the worst forms of child labour. It also requires state parties to pass national laws against these practices and ensure the same are "punishable by appropriate penalties that take into account their grave nature.	Ratified in 2000	UN Committee on the Rights of the Child
Palermo Protocol on Trafficking in Persons.	The protocol seeks to prevent, suppress and punish trafficking in human beings, especially women and children. It provides for the protection of children against the crime of child trafficking. It also	Ratified in 2005	Respective United Nations Committee

	encourages state parties to put in national laws to combat child trafficking and its various forms of exploitation which include child labour, and sexual exploitation among others.		
ILO Convention (No. 189) on Domestic Workers of 2011	Recognizes that domestic workers are, like other workers. It calls upon State parties to set the minimum age for domestic workers consistent with the provisions of the Minimum Age Convention, 1973 (No. 138), and the Worst Forms of Child Labour Convention, 1999 (No. 182), and not lower than that established by national laws and regulations for workers generally.	Not Ratified.	ILO

## 2.2 National and County Legal Frameworks and Institutional Architecture

Indeed, Kenya has progressive laws on the promotion and protection of children's rights, beginning with the 2010 Constitution. Various laws have been enacted (by the National Government and County Governments) addressing the issue of child employment, protection from child labour, worst forms of child labour and child trafficking. However, the above issues are addressed in different laws, policies as well as sectoral regulatory frameworks, resulting in a fragmented legal environment on child employment and enforcement mechanisms. Below is a list of the existing laws, policies, and regulatory frameworks relevant to the subject of the study.

National Law	Objective	Implementing Institution
The Constitution of Kenya 2010	Chapter 4 of the Constitution outlines rights and fundamental freedoms of all human beings including children in Kenya. It also obligates the government under Article 21 to promote, protect, respect and fulfill human rights. Articles 10, 27 and 27 provide for national values, respect for inherent human dignity and protection from any forms of discrimination based on different grounds including age. Article 41 guarantees everyone the right to fair labour practices. Article 53 outlines rights of the child and further extends protection to children from abuse, neglect, harmful cultural practices, all forms of violence, inhuman treatment and punishment, and hazardous or exploitative labour. It also provides for creation of Government organs and various constitutional commissions and independent	The Executive, Judiciary, Legislature, Constitutional Commissions and Independent offices.  Complemented by Civil society organizations, trade unions and private actors, and the public.

	offices whose mandate is to implement the Constitution by doing so they promote the realization of human rights and child rights respectively.	
Employment Act (Cap 226 laws of Kenya)	<p>Defines and declares fundamental rights of employees and employers' responsibilities. It also regulates the employment of children. A child is defined as any person who has not attained the age of 18 years. Part VII of the Act provides for the <i>protection of the child in the context of employment</i>, including protection from the worst forms of child labour. Outlines labour rights and minimum labour standards like specified number of hours of work, annual, maternity and sick leave, housing and medical attention. Section 56 prohibits employing a child below 13 years in any form of undertaking. However, it allows the employment of children from the ages of 13 to 16 years for light work which is not harmful to a child's health and development or affects schooling. The Act allows employability of children aged 16 to 18. It is worth noting that the Act does not clearly define the parameters for this employment. It also does not define 'light work.' It gives the responsible Cabinet secretary the power to develop the list of light work. Refer to Employment (General) Rules, 2014. Section 57 prohibits written contracts for children between the ages of 13 and 16 years and creates an offence punishable by a fine upon conviction of about Kshs. 100,000/ or imprisonment for not more than 6 months or both. The Act imposes in section 61 the requirement of a register for any person employing children. The register shall capture particulars of the child (age, Date of birth, date of entry to work and departure from work). Section 63 provides that in any proceeding where the age of a child is in issue, the Court's determination of that question is final and shall not be invalidated by any subsequent proof. Section 64 prescribes a penalty on conviction for the offence of unlawful employment of a child or use of a child in any activity constituting worst form of child labour to a fine not exceeding Kshs. 200,000/- or imprisonment for a term not exceeding 12 months or both. It further provides that the accused person can successfully plead defence upon proving that he genuinely had reason to believe that the child was above the age limit in question. Section 58 and 59, the minimum age for employment in an industrial undertaking is 16 years, unless he/she is an apprentice under the Industrial Training Act (Cap. 237, Laws of Kenya). The law also puts a time limit for a child in an industrial undertaking to between 6.30am to 6.30pm, but gives leeway for employment of a male young person, beyond the prescribed hours, in case of an unforeseeable emergency. For child employees employed by family or relatives, the Act stipulates that the minimum age</p>	Ministry of labour-Commissioner of Labour, National Steering Committee on Child Labour, National Labour board, Labour officers and Local Advisory and Child Labour Committees in the 47 Counties

Industrial Training Act (Cap. 237)	restriction does not apply- unless the undertaking is dangerous to the life, health or morals of the persons employed.	
Labour Institutions Act (Cap 229)	This Act establishes and regulates the Labour Institutions to which every employee can refer for dispute resolution.	Ministry of labour- labour department, Commissioner of Labour
Labour Relations Act (Cap 234B)	Provides for registration, regulation and management of trade unions. Stipulates ways of speedy dispute settlements, protection of freedom of association and promotes good employer and employee labour relations Mostly speaks to unionisable employees.	Ministry of labour- labour department, Commissioner of Labour
Work Injury Benefits Act (Cap 253)	The act provides for compensation of work-related injuries or diseases occasioned in the course of their employment. Defines an employee as any person who has been employed for wages or a salary under a contract of service.	Ministry of labour-Labour officers and medical advisory panel.
Occupational Safety and Health Act (2007)	It provides for safeguards that guarantee workers safety, health and welfare in workplaces and persons lawfully present at workplaces. The Act prohibits employment of any person below the apparent age of 18 years in any workplace or work process that is likely to harm the person's safety or health. Section 13 outlines duties of an employee to ensure his safety and health while section 14 obligates an employee to report any dangerous situation.	Ministry of labour- national council for occupational safety health, safety committees.
Children Act, 2022 (Cap 141 laws of Kenya)	<p>The Act defines a child as a person who has not attained the age of 18 years. Section 18, extends protection of the children from child domestic servitude, economic exploitation or any work or employment which is hazardous, interferes with the child's education, or is likely to be harmful to the child's health or physical, mental, moral or social development. Further, the Act attempts to align this provision with that of the Employment Act on child work.</p> <p>Section 18(4) of the Act mandates the CS responsible for matters relating to labour, together with his/her counterparts in charge of matters relating to Children's Affairs and Education, to within one year of commencement of the Act, make Regulations prescribing the terms and conditions of work and the kind of work that may be engaged in by children between the ages of 13yrs-16yrs and those between 16yrs – 18yrs.</p>	National Council for Children services and directorate of children services and other key state actors.
Counter-Trafficking in Persons Act (Cap 161)	<p>Defines child trafficking in section 3 (3) as the recruitment, transportation, transfer, harbouring or receipt of a child for the purposes of exploitation.</p> <p>Some of the forms of exploitation outlined include; child labour, servitude, child sexual exploitation, debt bondage among others.</p>	CTIP National Advisory Committee, the secretariat, Board of Trustees for



	It also provides for punitive punishment for persons who are found liable for the offences of trafficking in persons.	Victims of Trafficking fund
Sexual Offences Act (Cap 62A)	The Act extends protection from sexual offences and outlines various offences. It prohibits the promotion of child tourism, prostitution, trafficking and pornography, most of which are stipulated as the worst forms of child labour.	National Police Service, Judiciary and other Key state actors.
The Age of Majority Act, (Cap 33)	It sets out the Age of Majority- which is upon attaining the age of eighteen years.	Ministry of Interior and coordination of National Government-Registrar of Persons.
Basic Education Act, (Cap 211)	<p>The Act seeks to promote and regulate free and compulsory basic education. Provides for the right to education for all children in Kenya and outlines. The provision of basic education values and principles, which include; the right of every child to free and compulsory basic education.</p> <p>Section 30 provides for compulsory primary and secondary education and obligates every parent to ensure that the child attends regularly as a pupil at a school or such other institution as may be authorized and prescribed by the Cabinet Secretary for purposes of physical, mental, intellectual or social development of the child.</p> <p>Section 38 stipulates prohibition against employment of a child of compulsory school age. No person shall employ a child of compulsory school age in any labour or occupation that prevents such child from attending school. Any person who employs or prevents a child who is subject to compulsory attendance from attending school is guilty of an offence and is liable to a fine not exceeding five million or to a period not exceeding five years or to both.</p>	Ministry of Education, National Education Board, Education officers and other stakeholders.
Employment (General) Rules, 2014.	<p>Part IV specifies on engagement of children in employment. Rule 12 prohibits employment of a child who has not attained the age of 16 years without the prior written permission of an authorized officer (labour officer, employment officer or medical officer).</p> <p>Further stipulates on hazardous employment and prohibits employment that denies the child an opportunity to attend school or to play. It lists activities harmful to the health, safety and morals of a child in the 4th schedule to the rules, including mining, building and construction work and boda boda transport services. To further protect children from exploitative behaviour of employers, a permit is issued under this rule, renewable annually.</p>	Ministry of Labour- Labour Commissioner and relevant stakeholders.

	<p>The <b>5<sup>th</sup> Schedule</b> of these rules defines <i>light work</i>-constitutes work performed at school as part of the school curriculum for the benefit of a child, agricultural or horticultural work not exceeding two hours, delivery of non-bulk newspapers or printed materials, shop work including shelf stacking, domestic hairdressing, light office work, car washing by hand in private residential settings, and work in a cafe or restaurant provided the nature of work is restricted to waiting on tables.</p> <p><b>4<sup>th</sup> Schedule</b> defines <i>harmful work</i> as shown below: as work that involves exploitative conditions; causes physical and emotional abuse; denial of education; health hazard; social isolation and vulnerability to trafficking.</p>	
National Plan of Action for combating Trafficking in persons (2012-2027)	Provides strategies for implementing the CTIP ACT by all stakeholders guided by the 4P's (prevention, protection, prosecution and partnership) for combating child trafficking and human trafficking in Kenya effectively.	Advisory Committee on CTIP, the secretariat and the Board of Trustees for the National Trust Fund for Victims of Trafficking.
County Government legal Policies on Child Protection and child labour	There are several County Governments such as; Nairobi City <sup>12</sup> , Kakamega, Turkana, Bungoma, Isiolo and others that have enacted a policy on child protection extending safeguards to children in the County in a more contextualized manner which includes protection from child labour and other harmful practices that lead to the vulnerability of children hence exacerbating child employment and child labour.	Council of Governors, County Governments and relevant stakeholders.
<b>Other draft laws (Bills) and policies undergoing review in 2024</b>		
National Child Labour Policy, 2024	<p>The policy is aimed at supporting the Government and key stakeholders to undertake key interventions to combat child labour and strengthen safeguards for child protection.</p> <p>The policy also outlines a coordinated approach in the operations of various actors and partnerships to fulfil Kenya's obligation acquired through ratification and enactment of various international, regional, national and sub-national legal frameworks respectively.</p>	Ministry of Labour and other key stakeholders.
The Occupational Safety and Health Bill, 2024	<p>Clause 77 prohibits a person under the apparent age of eighteen years (a child not to be employed to install, maintain or operate any plant, equipment or machine, driven by mechanical power or to give signals to the operator of any such plant, equipment or machine.</p> <p>Further clause 103 (work processes that are hazardous to children) states that; 'An employer shall not allow a person below the apparent age of eighteen years to</p>	Ministry of Labour - Labour Commissioner - Occupational safety inspectors and relevant stakeholders.

<sup>12</sup> <https://nairobi.go.ke/download/nairobi-city-county-child-protection-safeguarding-policy-2022-draft/>

	engage in any work process or perform work which by its nature or the circumstances in which it is carried out, is likely to harm the safety or health of the person. The 14th schedule of this Bill makes provision of 'work processes that are hazardous to persons below 18 years.' A comprehensive list of processes that children, including those aged between 16 and 18 who are permitted to work under the Employment Act, are prohibited from being employed in due to the hazardous nature of these processes. Shown below. In addition to Clause and 104 (Supervision of apprentices and indentured learners).	
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### 2.3 Case law/Legal Jurisprudence on child domestic work Kenya

Some of the sampled court cases that have contributed to the jurisprudence of the subject matter are discussed below.

- a) Kenyan Courts have made pronouncements on the question of domestic work in general but scarcely on the particular issue of Child Domestic Work. The running theme in most employment claims involving domestic workers is the lack of a written agreement to define the relationship between parties. However, Courts have generally agreed that oral agreements between the parties in the context of domestic work, constitute a proper contract in law that can confer rights and are enforceable like in the case of **Nairobi ELRC Cause 267 of 2012 – Robai Musinzi v. Safdar Mohamed Khan**.
- b) Courts have also progressively moved to affirm and protect the rights of domestic workers. In **Mombasa ELRC Cause 336 of 2015 – Scholar Kavutee Mulei v. Maria Zermmlin**, Rika, J.J. opined as follows; *“The Court has stated that it is important for Domestic Workers to assert their employment rights. The Constitution of Kenya 2010, the Employment Act 2007, and the ILO Domestic Workers Convention 189 of June 2011, all call on the Courts to recognize, promote and protect the rights and freedoms of Domestic Workers. In Zena Ibrahim v. Ebubekirir Sahir [Industrial Court at Nairobi, Cause Number 11 of 2011], the Court restated the need for this recognition, promotion and protection.”*
- c) **Industrial Court Cause No. 1126 of 2016, Felister Nduku Nzaku v. Joyce Wairimu Gitau** - In this matter, the Claimant, an immediate former domestic worker to the Respondent sued the employer for unfair termination upon demanding her salary arrears. That the employee used to work as a domestic worker for the employer in Nairobi and used to earn Kshs. 4000 per month. That she had worked for 16 years having been employed at the age of 15 years. The Claimant therefore filed a suit claiming her Salary arrears of Kshs. 6,284.00, Notice pay, Annual leave pay for 16 years, Compensation for unfair termination and the amount for underpayment. The court was satisfied that the employee had indeed been unfairly terminated, underpaid, not paid for the annual leave and entitled to service pay since the employer was not remitting the due statutory deductions. Therefore, the

court entered judgment in favour of the Claimant under the following terms; ‘A declaration that the Claimant was unfairly terminated from her employment with the respondent; a finding that the respondent violated section 53 of the Employment Act and sanctioned her to pay the claimant kshs.50, 000.00 in terms of section 64 of the Act; Compensation awarded at kshs.131, 456.40; Notice pay at kshs.10,954.70; Salary arrears kshs.6,284.00; Leave days due payable at kshs.175,275.20; Underpayments all at kshs.264,160.00; Service pay at kshs.87,637.90; Certificate of Service be issued unconditionally and within 7 days and costs of the suit.

- d) ***HCC HR PET/E156/2024-Clifford Onyango Odhiambo v. The Honourable Attorney General, The Hon. Speaker of National Assembly, The Kenya Law Reform Commission, Federation of Kenya Employers, Kenya National Council for Children Services, Cabinet Secretary Ministry of Labour and Social Protection.*** The Petitioner alleges that while every child has the right to be protected from abuse, neglect, harmful cultural practices, all forms of violence, inhuman treatment and punishment and hazardous or exploitative behaviour under Article 53(1)(d), among many other rights guaranteed under the Constitution including the right to education. The Employment Act, the Children Act and the International Labour Organization Minimum Age Convention 138 of 1973 contravene the Constitution by allowing for the employment of children in certain circumstances. The Petitioner is seeking orders declaring all sections under Part VII of the Employment Act (Cap. 226), section 18 of the Children Act (Cap 141) and the International Labour Organization Minimum Age Convention 138 of 1973 as unconstitutional. The matter is ongoing.

## **2.4 Comparative analysis of other jurisdictions’ approach to child employment and child domestic work.**

Recognising that child employment specifically child domestic work is a global phenomenon affecting many countries, there is therefore need to sample interventions that other Countries have adopted to address the child labour menace. For instance, Germany has stringent and particular laws relating to the employment of children. The Youth Employment Protection Act (*Jugendarbeitsschutzgesetz*) and the Child Labour Protection Ordinance (*Kinderarbeitsschutzverordnung*) protect young people under the age of 18 from work which is too difficult, dangerous or unsuitable for them and also limits youth working hours. These laws are very particular as to the nature of work and terms of employment that children from the ages of 13 to 18 can be engaged in. For instance, children aged 13 to 14 years are allowed to work part time with the following conditions; their parents must agree, the work must not be damaging to their health or school performance, they are not allowed to work for more than two hours a day, they are not to work past 18:00 and they are not to come into contact with alcohol or tobacco. Other very particular conditions apply to children aged 15 to 18.

In Norway, the law generally does not allow the employment of children under the age of 13. Children aged 13 can only do light work while those aged 14 can only do work that is part of school or in practical vocational guidance which must be approved by the school authorities. The most notable provision in Norwegian Laws is that persons who want to employ children below 15 in cultural, artistic, sporting or advertising work are required to obtain consent of the Labour Inspection Authority. For other fields the employer must obtain the parent/guardian's consent. For children between 15 and 18 employers are required to give them a written contract even when the work period is short term such as during the school holidays. The Labour Inspection Authority has powers to order an employer to draw up a contract for a child when there is none. Further, in some industries a minimum wage is prescribed which applies to even children in employment. Working hours are also clearly prescribed. For instance, children are not allowed to work overtime. Break times during work hour are also prescribed. Example, children working more than 4 hours and 30 minutes a day are entitled to a break of at least 30 minutes. Additionally, the Government has established a strong social welfare system that supports families in need, reducing the economic pressures that often lead child employment and child labour.

Brazil has introduced “conditional cash transfer” programmes that have proven highly effective in addressing the root causes of child labour. These programmes provide stipends to underprivileged families, to ensure that children stay in school and are free from child labour.

## 2.5 Gap analysis on laws and policies showing existing inconsistencies.

This section details a gap analysis of laws and policies pointing to some of the inconsistencies unearthed. These findings are further supported by the findings of the key informant's interviews and the public survey detailed in Chapter 3.

The laws	Gaps & Inconsistencies
Constitution, Children Act, Employment Act, Basic Education Act & The ILO Convention 138 (Minimum Wage) of 1973	<p><i>Minimum age of employment</i></p> <p>Article 260 of the Constitution defines a child as a person under the age of eighteen (18) years. While the Constitution at Article 53 protects a child as defined from all forms of abuse statutory legislation and international law differs in regards to regulating the minimum age of employment.</p> <p>Section 56 of the Employment Act legalizes the employment of children between the ages of 13 and 16 to perform light work. The same Section obligates the Cabinet Secretary to make rules prescribing the light work that children aged between 13 and 16 years may engage in. There is no provision whatsoever regulation the employment of children</p>

	<p>aged 17 years leaving room for unregulated employment. The Act only completely abolishes the employment of children below the age of 13 years.</p> <p>Section 38 of the Basic Education Act prohibits the employment of a child of compulsory school age in any labour or occupation that prevents such a child from attending school. Nothing in the act defines 'compulsory school going age' which leaves room for differing interpretation. However, the act defines a child as a person below the age of 18 years. The act does not also define the kind of work that prevents a child from attending school.</p> <p>Section 18 (4) of the Children Act permits the responsible Cabinet Secretary to make regulations prescribing the terms and conditions of work for children who have attained the age of 13 to 17. Despite this provision prescribing that such regulations are to be formulated within one year of commencement of the act, no such regulations have been formulated so far.</p> <p>Section 1 of the Industrial Training Act defines a minor as a person under the age of 18 years. Section 7B (2) allows a minor to be admitted for industrial attachment with the consent of his parent or guardian or with the consent of the Director General. Section 8 has a similar provision in regards to apprentices and indentured learners. There is no provision whatsoever of any minimum age leaving room for employment of children from the ages of 0 to 17 as long as the said consent is obtained.</p> <p>The ILO Convention 138 (Minimum Wage) of 1973 establishes 15 as the minimum age for work in general. Article 3 of the Convention prescribes the minimum age for hazardous work to be not less than 18 years. Hazardous work is defined as work that, due to its nature or the circumstances in which it is carried out, is likely to jeopardize children's health, safety or morals. Seeing that Kenya has ratified this convention, the Children and Employment Act are in violation of the same as they provide for employment of children below the age of 13.</p>
Employment Act	<i>Definition of a young person</i>

	<p>Section 2 of the Employment Act defines a young person as a child who has attained the age of sixteen years but has not attained the age of eighteen years. This provision is not in the Children Act, Basic Education Act or the Constitution.</p> <p>The impact of this provision is the weakening of the legal safeguards provided in other laws for children guided by the definition of a child.</p>
Employment Act	<p><i>Regulation of working hours</i></p> <p>Section 59 (1) prohibits the employment of a child in industrial undertaking between 6:30 p.m. and 6:30 a.m. This is a prohibition relating to employment defined as an industrial undertaking at Section 2 of the Act. This includes employment in the mining, manufacturing, construction and transport sector. This leaves other forms of employment like domestic work unregulated.</p> <p>Subsection 2 allows the employment of a male young person in cases of cases of emergencies which could not have been controlled or foreseen, and which interfere with the normal working of the industrial undertaking and which are not of a periodical nature. This leaves room for exploitation of children aged 16 to 17 by being subjected to longer working hours.</p> <p>Subsection 3 allows the cabinet secretary to authorize an employer in writing to employ a young person for a specific period of the night subject to such conditions that the cabinet secretary may determine. This violates the constitutional protection of children from abuse and their right to education. It also contradicts the provisions of the Basic Education Act which prohibits the employment of children of compulsory school age when such employment prevents them from attending school. It also contradicts Section 18(1) of the Children Act which prohibits child labour and employment that interferes with a child's education. A child that has been working overnight cannot attend school and even if they do their ability to be fully present is compromised.</p>
Employment Act	<i>Prohibition of written contracts</i>

	<p>Section 57 of the Employment Act prohibits the employment of children between 13 and 16 years under a written contract of service. It only permits such employment under verbal contracts of service. Under common law, minors can sign contracts but the same are voidable at the option of the minor. In the United Kingdom, minors can sign a contract for employment or apprenticeship where the same is for the benefit of the child.</p> <p>The prohibition of written contracts leaves room for abuse of children in employment who are often underpaid or not paid at all as it is difficult to enforce a verbal contract.</p>
Employment Act	<p><i>Definition of employment</i></p> <p>Section 52 defines the employment of a child as a situation where:</p> <ul style="list-style-type: none"> <li>a) the child provides labour as an assistant to another person and his labour is deemed to be the labour of that other person for the purposes of payment;</li> <li>b) the child's labour is used for gain by any person or institution whether or not the child benefits directly or indirectly; and</li> <li>c) there is in existence a contract for service where the party providing the service is a child whether the person using the services does so directly or by agent.</li> </ul> <p>By recognizing contracts of service with a child but prohibiting written contracts in the same breath, the Employment Act contradicts itself. By including situations where a child is used for the gain of another person even when they are not benefitting, it leaves room for exploitation of children under the disguise of 'employment'.</p>
Employment (General) Rules, 2014.	<p><i>Definition of light and hazardous work</i></p> <p>The 4<sup>th</sup> schedule provides clarity as to what amounts to work harmful to a child's health, safety and morals. Employment that involves such activities are prohibited at Section 53 (1) of the Employment Act.</p> <p>The 5<sup>th</sup> schedule defines light work to include; work performed at school as part of the school curriculum for the benefit of a child, agricultural or horticultural work not exceeding two hours, delivery of non-bulk newspapers or</p>



	<p>printed materials, shop work including shelf stacking, domestic hair dressing, light office work, car washing by hand in private residential setting, work in a cafe or restaurant provided the nature of work is restricted to waiting on tables.</p> <p>There is however lack of clarity as to the entity or body responsible for monitoring compliance to these Schedules. Further, there is no provision as to the monitoring, evaluation and update of the said lists to meet current need. For instance, with the wake of content creation, filming, modelling, advertising and other internet and technology related fields that involve children, there is no regulation whatsoever on whether such work is allowable or harmful to children.</p>
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The definition of the worst form of child labour encompasses child trafficking. This invites a contradiction in the mode of enforcement between the Employment Act and the Counter Trafficking in Persons Act.

Below is the definition of the various offences with similar elements but their respective penalty for the offenders found culpable is inconsistent. This creates gaps and confusion for police and prosecution counsel as they struggle to identify which law to use for trial thus providing an easy way out for perpetrators where the lesser penalty law is adopted for trial.

The law	Definition	Penalty of the offence
Children Act	<p><i>Protection from child labour</i></p> <p>Section 18. (1) No person shall subject a child, to child labour, domestic servitude, economic exploitation or any work or employment which is hazardous, interferes with the child’s education or is likely to be harmful to the child’s health or physical, mental, moral or social development.</p> <p>(2) For the purposes of subsection (1) —  (a) “employment” has the meaning assigned to it under section 52 of the Employment Act; (b) the provisions of Part VII of the Employment Act shall apply with necessary modifications in addition to, and not in substitution for,</p>	<p><i>Protection from child abuse.</i></p> <p>Section 22. (1) No person shall subject a child to  (a) psychological abuse; or (b) child abuse. children. Protection from abuse,</p> <p>(2) Any person who contravenes section 22 subsection (1) commits an offence and shall, on conviction, be <b>liable to imprisonment for a term not exceeding five years or to a fine not exceeding</b></p>

	<p>the provisions of this Act relating to the employment of children or subjection of children to child labour.</p> <p>(3) No person shall use, procure or offer a child for slavery or practices similar to slavery, including begging, debt bondage, servitude, or forced or compulsory labour or provision of personal services, whether or not for gain.</p>	<p><b>two million shillings, or to both.</b></p> <p><b>Or</b></p> <p><b>General penalty</b></p> <p><b>Section 246.</b> A person convicted of an offence under this Act General penalty, for which no other penalty is prescribed shall be liable to <b>imprisonment for a term not exceeding twelve months, or to a fine not exceeding two hundred thousand shillings, or to both.</b></p>
<p>Employment Act</p>	<p><i>Worst forms of child labour</i></p> <p>“Worst form of child labour” with respect to juveniles, means their employment, engagement or usage in any activity comprising of— (a) all forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory recruitment of children for use in armed conflict;</p> <p><i>Prohibition of worst forms of child labour</i></p> <p>Section 53 (1) Notwithstanding any provision of any written law, no person shall employ a child in any activity which constitutes worst form of child labour.</p> <p>(2) The Minister shall, in consultation with the Board, make regulations declaring any work, activity or contract of service harmful to the health, safety or morals of a child and subsection (1) shall apply to such work, activity or contract of service.</p>	<p>Section 64 (2) A person who uses a child in any activity constituting worst form of child labour commits an offence and <b>shall on conviction be liable to a fine not exceeding two hundred thousand shillings or to imprisonment for a term not exceeding twelve months or to both.</b></p>

<p>Counter Trafficking in Persons Act.</p>	<p><i>Trafficking in persons</i></p> <p>Section 3 (1) A person commits the offence of trafficking in persons when the person recruits, transports, transfers, harbours or receives another person for the purpose of exploitation by means of— (a) (b) (c) threat or use of force or other forms of coercion; abduction; fraud; [Issue 1] 6 [Rev. 2012] Counter-Trafficking in Persons No. 8 of 2010 (d) (e) (f) (g) deception; abuse of power or of position of vulnerability; giving payments or benefits to obtain the consent of the victim of trafficking in persons; or giving or receiving payments or benefits to obtain the consent of a person having control over another person.</p> <p>(2) The consent of a victim of trafficking in persons to the intended exploitation shall not be relevant where any of the means set out in subsection (1) have been used.</p> <p>(3)The recruitment, transportation, transfer, harbouring or receipt of a child for the purposes of exploitation shall be considered “<b>trafficking in persons</b>” even if this does not involve any of the means set out in subsection (1) of this Act.</p> <p>(4) An act of trafficking in persons may be committed internally within the borders of Kenya or internationally across the borders of Kenya.</p> <p>(5) A person who traffics another person, for the purpose of exploitation, commits an offence and is liable to</p>	<p>liable to imprisonment for a term of not less than thirty years or to a fine of not less than thirty million shillings or to both and upon subsequent conviction, to imprisonment for life.</p> <p>shall be liable to imprisonment for a term of not less than thirty</p>

	(6) A person who finances, controls, aids or abets the commission of an offence under subsection (1)	<b>years or to a fine of not less than thirty million shillings or to both and upon subsequent conviction, to imprisonment for life.</b>
Basic Education Act	<p><i>Prohibition against employment of a child of compulsory school age.</i></p> <p>Section 38. (1) No person shall employ a child of compulsory school age in any labour or occupation that prevents such child from attending school.</p> <p>(2) Any person who employs or prevents a child who is subject to compulsory attendance from attending school</p> <p>Section 40 (3) Any parent who without a reasonable cause and after a written notice from the head teacher, fails to comply with section 38 of this Act,</p>	<p>is guilty of an offence and is liable to <b>fine not exceeding five million</b> or to <b>a period not exceeding five years or to both.</b></p> <p>commits an offence and is liable on conviction to a <b>fine not exceeding five hundred thousand shillings</b> or to <b>imprisonment for a period not exceeding two years or to both.</b></p>
Employment Act	<p><i>Prohibition of employment of children between thirteen years and sixteen years of age</i></p> <p>Section 56. (1) No person shall employ a child who has not attained the age of thirteen years whether gainfully or otherwise in any undertaking. (2) A child of between thirteen years of age and sixteen years of age may be employed to perform light work which is— (a) (b) not likely to be harmful to the child's health or development; and not such as to prejudice the child's attendance at school, his participation in vocational orientation or training programmes approved by the Minister or his capacity</p>	<p>(2) A person who uses a child in any activity constituting worst form of child labour commits an offence and <b>shall on conviction be liable to a fine not exceeding two hundred thousand shillings</b> or to <b>imprisonment for a term not exceeding twelve months or to both.</b></p>

	<p>to benefit from the instructions received.</p> <p>(3) The Minister may make rules prescribing light work in which a child of between thirteen years of age and sixteen years of age may be employed and the terms and conditions of that employment.</p> <p><i>Penalty for unlawful employment of child</i></p> <p>Section 64 (1) A person who employs, engages, or uses a child in an industrial undertaking in contravention of the provisions of this Part, commits an offence.</p> <p>(2) A person who uses a child in any activity constituting worst form of child labour commits an offence and</p> <p><i>Penalty in case of death or injury of a child</i></p> <p>Section 65 (1) If a child is killed, dies or suffers any bodily injury in consequence of his employer having contravened any provision of this Part,</p> <p>(2) An employer shall not be liable under subsection (1)— (a) in the case of injury to health, unless the injury was caused directly by the contravention; and (b) if a charge against him under this Part in respect of the act or default by which the death or injury was caused has been</p>	<p><b>shall on conviction be liable to a fine not exceeding two hundred thousand shillings or to imprisonment for a term not exceeding twelve months or to both.</b></p> <p><b>(3) <i>It shall be a defence if the accused person proves that he genuinely had reason to believe that the child was above the age limit, which is the subject of the charge.</i></b></p> <p>the employer shall, in addition to any other penalty, be liable to a fine not exceeding five hundred thousand shillings or to imprisonment for a term not exceeding twelve months or to both and the whole or any part of the fine may be applied for the benefit of the injured child or his family or otherwise as the Minister may direct.</p>
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	heard and dismissed before the injury occurred.	
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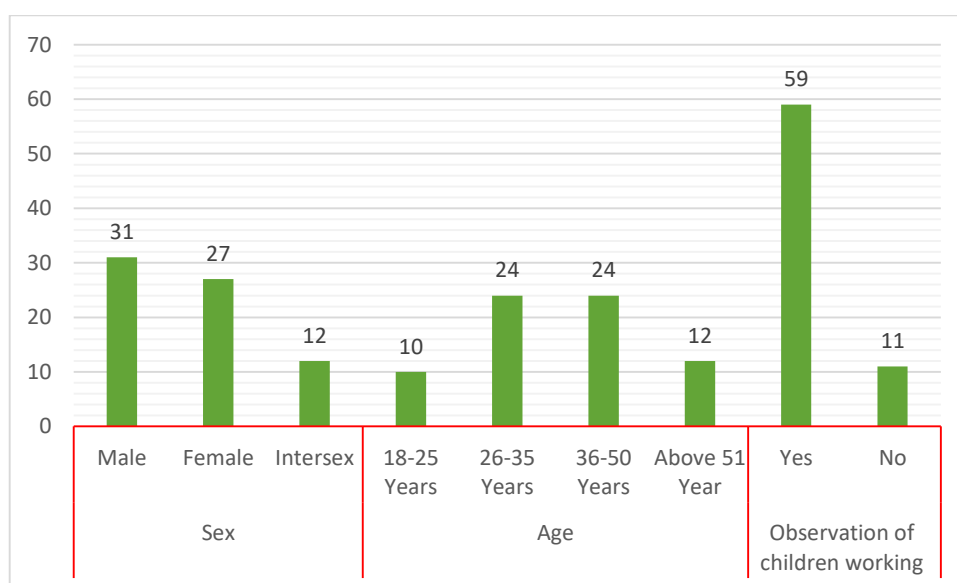
The above tables show examples of fragmented provisions on the protection of children from child labour in various laws. It is also notable that Kenya has not ratified the ILO Convention (No. 189) on Domestic Workers of 2011. This can be ratified and domesticated through the development of a standalone law or policy for the protection of domestic workers in Kenya as they have remained invisible for decades.

It is notable that the above examples point to the inconsistencies between the sampled laws not to mention other laws such as the Sexual Offences Act and, the Protection against Domestic Violence Act, among others. There is therefore an urgent need for law review to enhance the protection of children in domestic work and child labour in the informal economy and promote children's rights as the overall goal.

## Chapter 3: Key Findings

This section presents the study's findings, which are derived from a comprehensive analysis of qualitative data gathered from various stakeholders' perspectives and quantitative data obtained from public surveys on children's employment. The analysis delves into the inconsistencies within the legal framework governing child employment and child domestic work, examining the laws, their enforcement mechanisms, and the subsequent effects on children. Besides, the section lays the groundwork for proposing targeted reform measures and recommendations to address the identified gaps and inconsistencies within the legal framework governing child employment.

### 3.1 Demographic characteristics of the respondent



**Figure 1: Demographics characteristics of the participants of the study and child employment observation.**

The demographic composition of the participants exhibited diversity. The study involved 31 male participants, 27 female participants, and 12 Intersex Persons. This excludes data from 3 female survivors of child domestic workers who were interviewed during the validation forums. In terms of age distribution, 10 respondents belonged to the 18-25 age bracket, while 24 respondents fell within the 26-35 age bracket, and another 24 were between 36-50 age bracket. The remaining 12 participants were above the age of 51.

Regarding community observations related to child labour, a significant majority of 59 respondents reported witnessing children engaged in various forms of employment within their localities. Conversely, 11 respondents stated that they had not encountered instances of children employed in their immediate surroundings. This data suggests

that child employment and possibly child labour is prevalent in Kenya particularly, within the communities represented in the study.

*Survivor of CDW 1*

*“Child domestic work is happening big time. A child should not be forced to work a child is a child and the Government should provide ways of supporting us to go back to school or get skills and delay our engagement in any form of work. I started working at 13 years old in domestic work I did everything in the house, I am surprised that there is a law that says I was not supposed to do laundry, cook and care for the children yet I did all these in that house while taking care of adults just because I came from a poor family. I did not want to work but I had no option. That law is not known and does not work in my case no one came to my rescue.”*

Further, the data collected in this study showcased the prevalence of Child employment in various sectors. The highest number of children in employment was in the domestic sector which accounted for 29%, Agriculture at 17%, Mining at 14%, the hospitality sector at 11%, Jua kali industry (artisanal and street trading) at 8%, transport and manufacturing sectors tied at 6% while pastoralism was 3%.

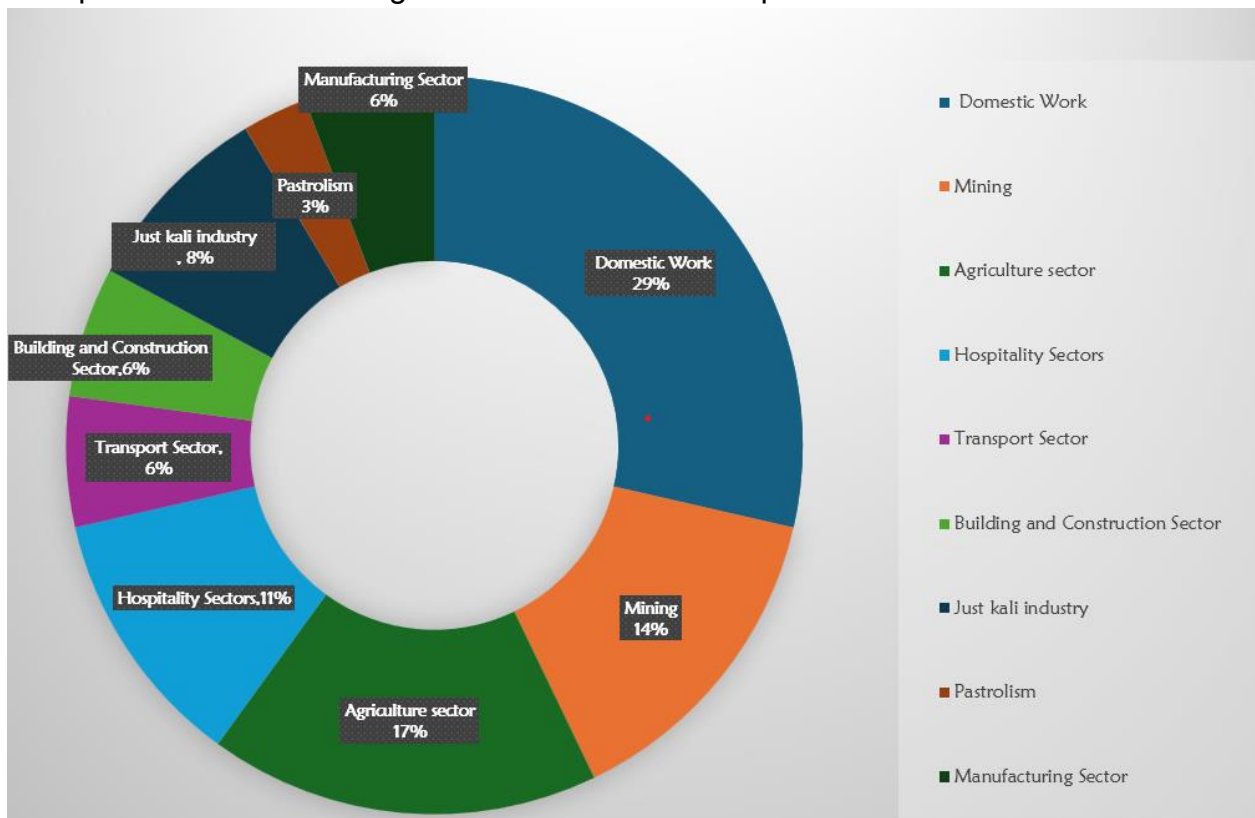


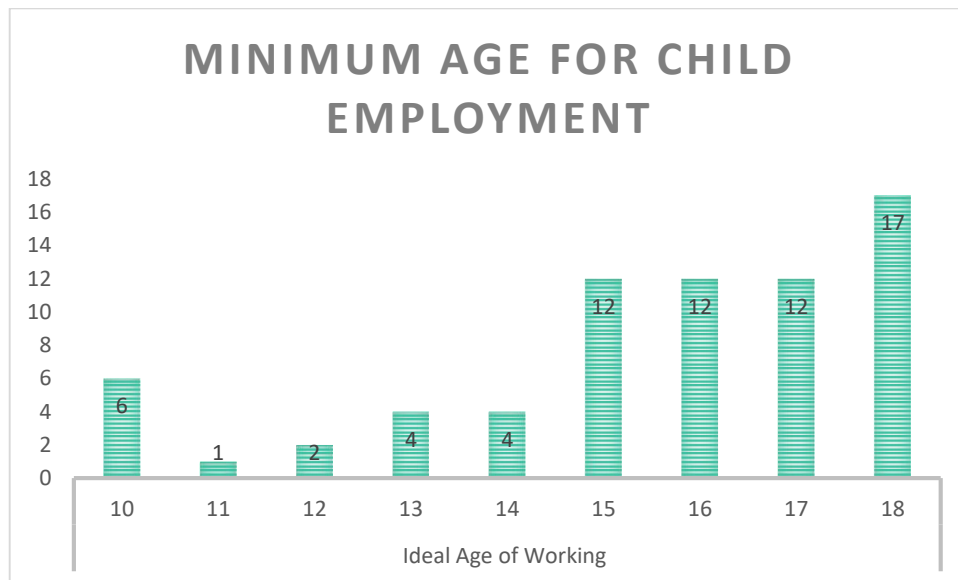
Figure 2: Observation of the prevalence of child employment in various sectors.

### 3.2 Minimum Age of Child Employment in Kenya

The research explored participants' perspectives on the appropriate age threshold for child employment. Regarding the child's age of employment, 51% of respondents indicated that 18 years should be the age limit. However, 19% of respondents felt that



the legal and regulatory framework should define a child in employment as being between 15 to 17 years old. When asked about the minimum age at which a child should be allowed to work, the majority of participants suggested an ideal range from 15 years to 18 years old. This suggests a diversity of opinions on the appropriate age boundaries for child employment, with some favouring an 18-year threshold and others considering a lower range of 15 to 17 years as more suitable as shown in the Figure below.



**Figure 3: Respondents' observation on the Minimum Age of Working for Children in Kenya.** These findings highlight the need for further discussion and consensus-building around the definition of the minimum age of work for children and the respective circumstances of child employment as evidenced by the varying perspectives among the respondents on the appropriate age limit.

Below are sample responses that can further unearth the existing gap between policies, knowledge of the laws and their implementation as well as the actual practice on the ground.

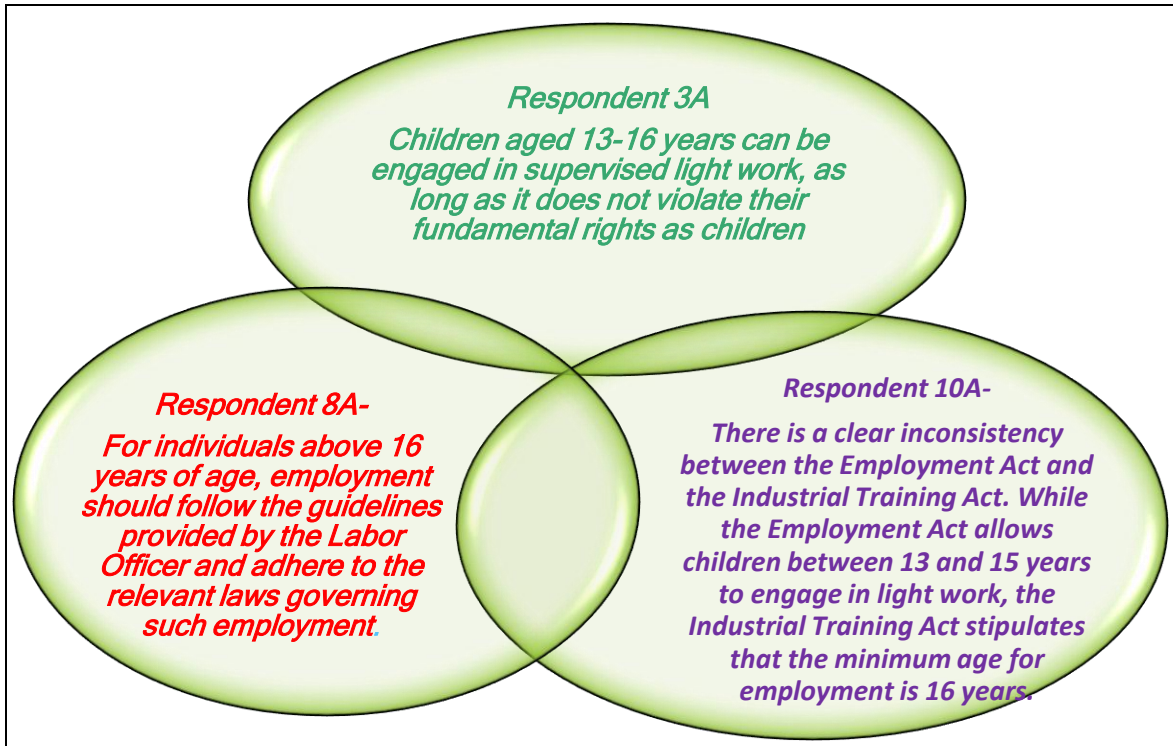


Figure 4: Sampled views of Respondents' observation on the Minimum Age of Working for Children in Kenya.

### 3.3 Protection of Children in Employment by Laws

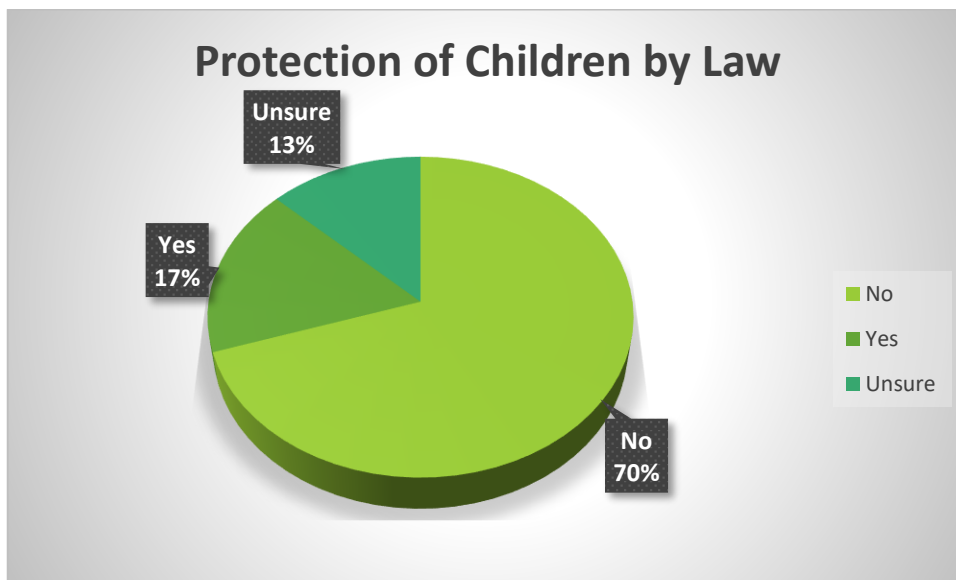


Figure 5: Respondents' views on the adequacy of legal protections for employed children in Kenya.

The study aimed to understand the participants' perception of whether existing laws and regulations adequately protect children in the context of employment. The findings suggest a mixed perception on the adequacy of child employment laws and regulations. First, the majority of respondents (70%) expressed the view that the current laws and regulations do not adequately protect children in employment. This suggests that there is a general lack of confidence among the respondents that the

legal framework effectively protects the rights and welfare of children in the workforce. However, a smaller proportion (17% of respondents) believed that the existing laws adequately protect children in this respect. While 13% of the participants were unsure whether the current laws fully protect children in employment or not.

A significant majority had concerns and doubts about the effectiveness of the current regulatory environment for children in employment. This highlights the importance of continuously reviewing and strengthening legal and policy measures to ensure comprehensive protection of children's rights and the well-being of children in employment, particularly the workforce in the informal economy.

#### *Survivor of CDW 2*

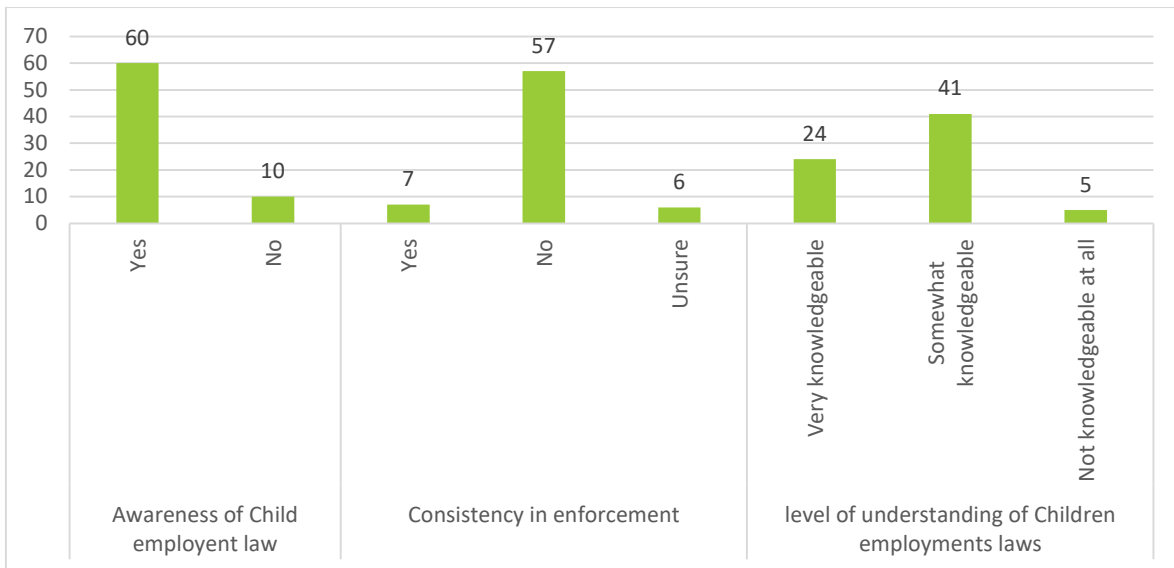
*“On my part, I began my healing process and recovery after learning that my experience of child domestic work was not right both in law and in practice. All I can say is that the organization that took me made me feel loved as a child, explained to me why access to justice was necessary and allowed me to go for counselling. It is terrible that when a case is reported there is more focus on perpetrator and justice process. However, in my opinion, the perpetrator should wait and allow the survivor to go through a healing processes until they are in the best frame of mind to support the court processes.”*

### **3.4. Awareness and understanding of children employment laws.**

The research study explores participants' awareness and understanding of child employment laws, as well as their perceptions of consistency in the enforcement of these laws. The results show that the majority of respondents 86% (60 out of 70) indicated that they were aware of the existing laws and regulations governing child employment. This suggests that the respondents have a relatively high level of familiarity with legal framework.

However, when it came to the depth of understanding of these laws, the responses were subtle. The largest proportion of 59% (41 respondents) reported a moderate level of knowledge about child employment laws. At the same time, 34% (24 respondents) considered themselves very knowledgeable; while 7% (5 respondents) admitted that they did not have any knowledge of the relevant laws.

Moreover, the research examined the participants' views on the consistency of the enforcement of child employment laws. These findings point to a significant concern. The majority of respondents, 81% (57 out of 70) expressed the view that the enforcement of the laws is inconsistent across the Country. Only 10% (7 respondents) felt that the laws were applied consistently, while 9% (6 respondents) were not sure.



**Figure 6: Respondents' awareness of legal frameworks and protections for children in employment in Kenya.**

These findings suggest that although there is a relatively high level of awareness of the existence of laws on child employment laws, there is a lack of understanding and widespread concerns about the inconsistent enforcement of these laws, opening up gaps for child labour cases and potential abuses. This could jeopardize the effectiveness of the legal framework in protecting the rights and well-being of children in the workforce. This research highlights the need for continued efforts to improve the understanding of laws on child rights and child employment in the communities, as well as the consistent and effective enforcement of these laws to ensure comprehensive protection of children's interests.

**Survivor of CDW 3**

*"Children should not work. Some of us have the right to be in school like any other children it is only that our family situation forced me to be out of school. The employers and the community also do not know the laws you have mentioned about hazardous work. I used to wake up at 4am and would sleep late past midnight at times waiting for the employer and the spouse to finish eating their meals and stories for me to wash the utensils and go to bed, this is because I had been warned to ensure that no dirty plate or cup should be carried forward to the next day."*

The resolution of these problems can contribute to creating a more equitable and protective environment for children engaged in employment or at risk of employment.

*"Employment of children in Kenya is regulated by the International Labour Organization conventions, the Constitution of Kenya 2010, the Employment Act, and the Children Act."*

*Respondent 1A*

*"The Children Act 2022 is the relevant policy for regulating child employment in Kenya."*

*Respondent 5C*

*"The Employment Act regulations and Industrial Training Act govern where and how children can be employed."*

*Respondent 11A*

*"Yes, employment of children is regulated by maintaining a register of child employees, ensuring supervision, and monitoring their work timings. The policies include Apprenticeship guidelines and skill development regulations."*

*Respondent 3A*

*"Kenya is a signatory to ILO conventions like No. 182 on the Worst Forms of Child Labour and No. 138 on the Minimum Age for Employment. These provide guidance on where children can be employed and set minimum age limits for different types of work."*

*Respondent 4A*

### **3.5 Inconsistencies in the employment of children**

On the issue of whether there are inconsistencies in the laws regarding the employment of children. The research established that 81% of respondents expressed the view that the enforcement of the laws is inconsistent across the country, 10% said that the laws were applied consistently, and the remaining 9% were not sure.

The Respondents observed that indeed there were inconsistencies in the laws, although many pointed to the main challenges of fragmented legal provisions on child employment and protection from child labour, siloed approach in the implementation and enforcement of these laws as well as different monitoring and reporting structures at the county and grassroots level as key indicators to the inconsistency.

The following are sample responses from various stakeholders.

*"Yes, there are many inconsistencies, the laws and regulatory policies speak differently. For instance, why should a child who needs to be in school as per the Basic Education Act be at some employment? Child labor is a form of child exploitation and child trafficking, thus a criminal activity."*

*Respondent 7A:*

*"Yes, in Law the Employment Act provides for the conditions under which children should work, and the Children Act prohibits the same. In industrial regulations, children of 16 are allowed to work in apprenticeship."*

*Respondent 6A*

*"The consistency in laws like the Children Act and Employment and Instrumental and Training Act with regard to first who is the child and minimum age of employment put the regulations in different sectors into a disarray enforcement and practice."*

*"Lots of inconsistencies exist on the above:*

*(a) Laws - The Children Act (2022) and Employment Act (2007) provide varied exceptions on child labor. The former does not condone child labor, but the latter does with support of apprenticeship of ages 16 - 17 years old.*

*(b) Regulatory policies - Kenya has National Plans of Action on Children and Child Labor in separate forms.*

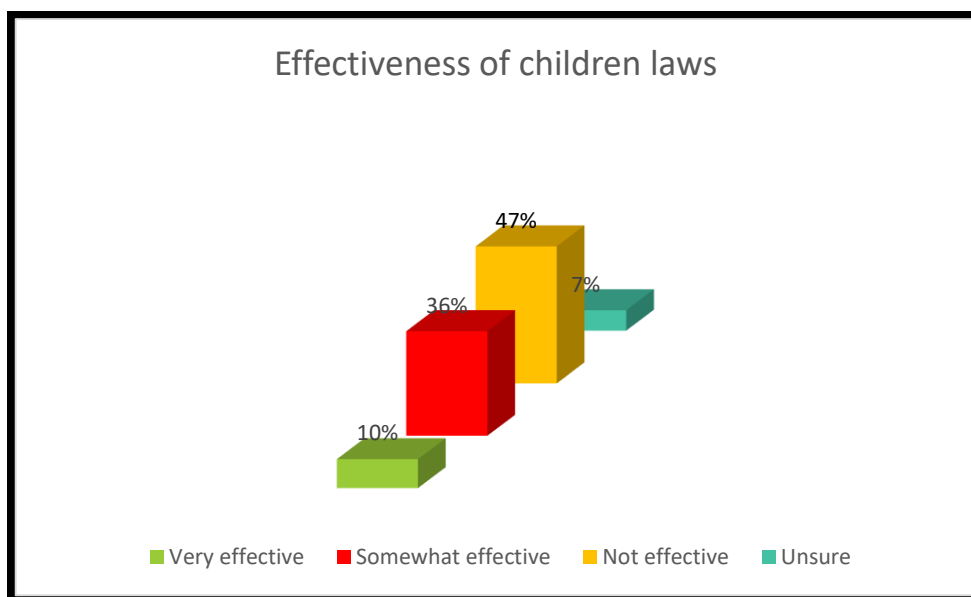
*(c) Institutional Practices - Again, the County Children Advisory Councils and County Child Labor Committees tackle similar issues but are run by different offices within one ministry with almost the same stakeholders and different budgets and mandates. This needs to be harmonized."*

*Respondent 2A*

### **3.6 Effectiveness of Laws governing child employment, child domestic work and child labour in Kenya.**

The research findings demonstrate that the effectiveness of laws in protecting the rights and well-being of children in employment or child labour is a complex and contested issue. A significant majority of 47% of respondents felt that the laws were **not effective**. This indicates a widespread perception that the current legal framework is failing to adequately safeguard the interests of children in employment such as child domestic workers among others.

However, a notable 36% of respondents felt that the laws were **somewhat effective**, suggesting that there may be areas where the laws are having a positive impact, even if they are seen as insufficient in general. The fact that only 10% of the respondents felt the laws were **effective** underscores the general sentiment that more needs to be done to strengthen legal protections for children engaged in employment whether paid or unpaid. Interestingly, 7% of respondents were **not sure** about the laws' effectiveness. This points to a lack of clarity or inadequacy of awareness around the actual provisions and enforcement of laws concerning children in employment and child labour.



**Figure 7: Respondents' observation on the effectiveness of laws on children's employment in Kenya.**

*Survivor of CDW 1*  
*"Guardians who neglect children and force them to get employed instead of going to school should be arrested. Why should I be denied my rights?"*

### **3.7 Effects of Children's Employment to Children.**

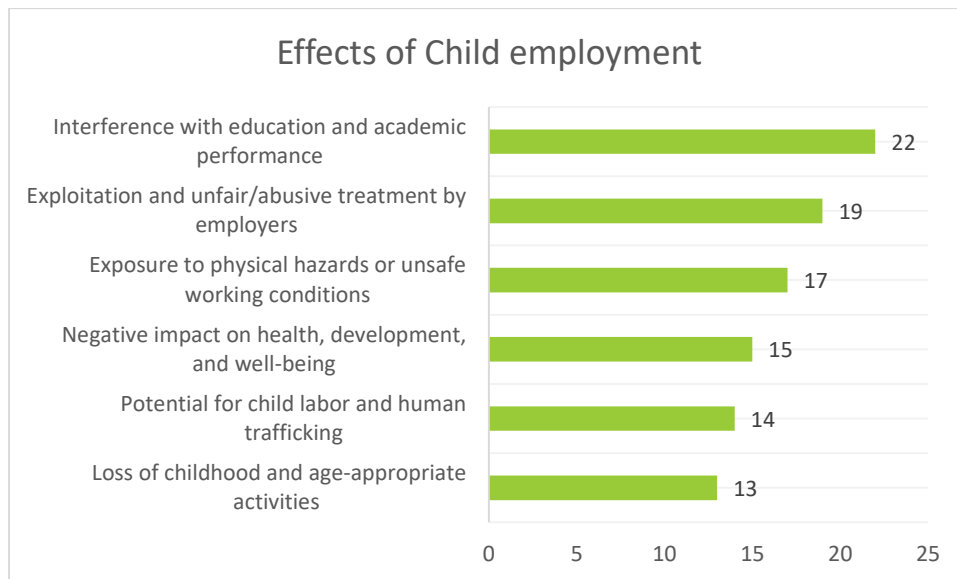
The research further delved into the potential negative impact of child employment. The findings highlighted some key concerns raised by the respondents. For instance, the most significant concern expressed by 22% of the respondents was the interference of access to education and academic performance of the child engaged in any form of employment. This highlights the fundamental importance of ensuring that children are allowed to focus on their studies, growth, and personal development, rather than being burdened with work responsibilities.

Another major concern expressed by 19% of respondents was the risk of exploitation, abuse and unfair treatment of children by their employers. This is irrespective of whether the employers are related to the child or otherwise. It points to the need for strong child labour laws and enforcement mechanisms with stricter penalties to protect children from exploitation. The laws must therefore ensure fair and humane treatment of the children who find themselves in the workplace for one reason or another.

Additionally, 17% of the respondents expressed concerns about the exposure of children to physical hazards and dangerous working conditions. This points to a greater likelihood of children being exposed to hazardous work. It is also a key issue since the health and safety of children should be of the utmost importance in any employment situation.

Moreover, 15% of the respondents highlighted the potential negative impact of child employment on the overall health, development, and well-being of children. This reflects the comprehensive challenges that child labour poses to a child's

developmental milestones, whose impacts are felt beyond education and economic factors.



**Figure 8: Respondents' observation on the multifaceted impacts of child employment on children.**

Key concerns were raised about the possibility of child employment being a grooming zone for possible child trafficking. The (14%) of the respondents observed human trafficking as one of the effects of child employment. While another 13% observed the loss of engaging in childhood activities and age-appropriate activities as another negative effect of child employment.

These perspectives highlight the wide-ranging and multifaceted impacts of child employment and child labour, which can have a significant impact on the realization of children's rights, personal development and overall quality of life for the affected children.

The following are verbatim sample responses on the issue, clearly depicting the harm of employment of children and the need to reconsider other alternatives to child employment.

"Employment of children perpetuates the cycle of poverty. The child will undergo psychological challenges, self-isolation, stigma, and a sense of hopelessness."

*Respondent 13B*

"It denies them education rights, social rights, and dignity, and exposes them to exploitation, thus abuse, and gets emotional and psychological abuse thus infringes on their rights as children mentally, physically, and socially."

*Respondent 10A*

"Every child has a right to natural growth and development in all areas of knowledge and extra-curricular activities. The employment of a child deters these critical areas



of growth. They end up not getting education and wholesome development, degenerating into low literacy levels, poor interpersonal skills, and predisposed to lower future employment opportunities, increasing the poverty cycle and psychological well-being."

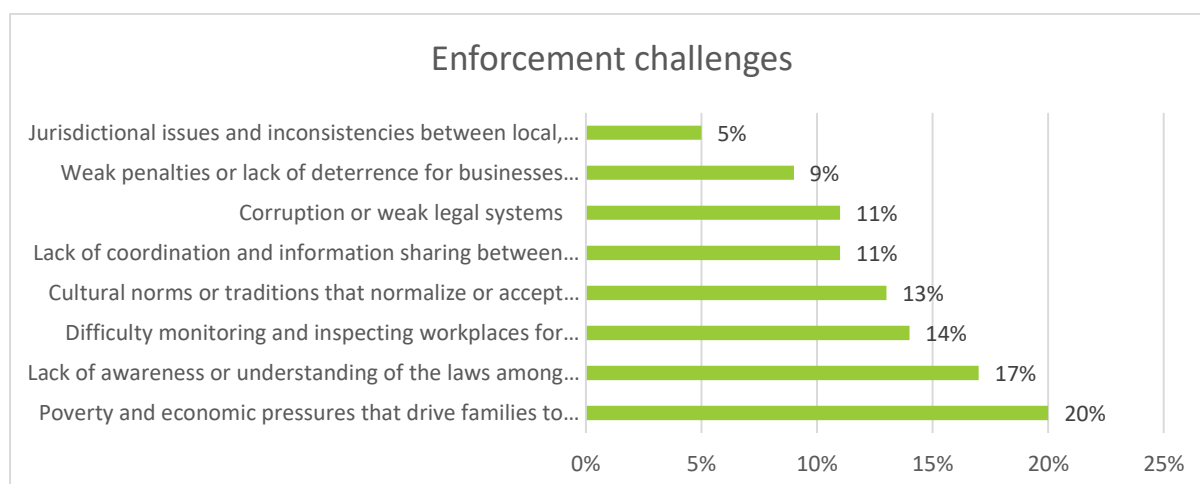
*Respondent 11C*

"Loss of childhood, lack of education, health and safety risks, and limited opportunities for social development are major challenges faced by children in child labor."

*Respondent 1A*

### 3.8 Enforcement Challenges of Laws on Child Employment.

The research delved into the impediments faced during the implementation and enforcement of child employment laws. The most significant challenge was found to be poverty and economic pressure that drives families to rely on child employment and subsequently, child labour, as reported by 20% of the respondents. Further, 17% of respondents pointed to a lack of awareness and low understanding of the laws among employers and the public at large as another key obstacle. Other generalized challenges mentioned were; difficulties in monitoring and inspecting workplaces where children are employed or work by (14%) of the respondents. Corruption and a weak legal system (14%), lack of coordination and information sharing between enforcement agencies (14%), weak penalties (9%), and jurisdictional issues and inconsistencies between local, regional, and national laws (5%).



**Figure 9: Multifaceted challenges experienced in the enforcement of child employment laws in Kenya.**

In summary, the enforcement of child employment laws faces a range of significant obstacles, from economic pressures driving child labour to systemic challenges within the legal and regulatory framework, all of which must be addressed to improve compliance with these crucial laws.

*"Migration, both internal and across borders, can complicate efforts to address child labor. Children from migrant or displaced communities may be at higher risk of exploitation and may fall through the gaps in protection systems, requiring coordinated efforts across regions and jurisdictions."*

*Respondent 2A*

*"In sectors such as agriculture, manufacturing, and services, global supply chains can be complex and difficult to monitor effectively. It proves difficult to trace and address child labor practices throughout these supply chains, especially in informal or unregulated sectors."*

*Respondent 3A*

*"Legal provisions on enforcement mechanisms to protect children are a challenge, there is lack of clarity on which law to apply and non-responsiveness of alleged perpetrators while following a case is a hurdle."*

*Respondent 4D*

*"Prevailing poverty levels among households allow children to engage in child labor, while the placement and support of rescued children are also challenges."*

*Respondent 7D*

*"Lack of knowledge on child labor and intervention strategies, as well as lack of community support on child labor, are obstacles."*

*Respondent 8C*

*"Poor referral pathways for cases of child labor and the provision of shelters and safe spaces during prosecution are challenges."*

*Respondent 13B*

*"Poor coordination and collaboration between different actors, as well as inadequate skills on handling children's cases by different agencies/stakeholders, are obstacles."*

*Respondent 16A*

### **3.9 Emerging Trends on Child Employment**

The research findings highlight various trends and emerging issues related to child employment and exploitation in Kenya. One of the most alarming developments is the rise of online child exploitation, including the creation of explicit content, online recruitment, and the issuance of fake documents to children to misrepresent their age in order to gain access to employment opportunities.

Respondents noted an increase in online sexual exploitation, with children being targeted and groomed through social media platforms, online gaming communities, and digital communication tools some of these guided as employment opportunities. This form of exploitation often occurs remotely and within enclosed spaces, making it challenging to detect and address.

Additionally, the research findings indicate a growing trend of children being involved in the collection and selling of scrap metals, plastic bottles and other recyclable

materials. Other forms of child employment or child labour mentioned included street vending of foodstuff and snacks such as teas, ground nuts, and candies. Boys particularly have been seen hanging loosely on sand trucks/ lorries, which exposes them to significant risks and hazardous conditions.

The influx of children from neighbouring countries, such as Uganda and Tanzania, some coming in for employment as domestic workers and others being trafficked for child begging, points to the need for a comprehensive regional law on child employment and protection of children against child labour and child trafficking as well as strengthening of cross border monitoring and response mechanisms.

Respondents also highlighted the increasing practice of impersonation of parenthood status to vulnerable children for selfish gains. This practice occurs when individuals falsely claim to be parents, guardians, or even close relatives of the child such that their engagement with the child is viewed as more of a family-based interaction. This way the impersonator exploits the vulnerability of this child and pushes them to employment and exploitation under the watch of unsuspecting authorities and the community. Unfortunately, this is often the case for live-in child domestic workers.

## **Chapter 4: Conclusion and Recommendations**

### **4.1 Conclusion**

The findings of this study shed light on the complexity and multifaceted issue of child employment and more specifically child domestic work in Kenya, in Nairobi City County, Busia County, and Mombasa County. Through a rigorous mixed-method approach encompassing desk reviews, key informant interviews, and public surveys; the study provided valuable insights into the demographic characteristics of respondents, perspectives on the inconsistencies in laws regulating child employment, the minimum age of child employment, the effectiveness of existing laws, enforcement challenges, effects of child employment and child labour, emerging trends in child employment and forms of exploitation.

The study revealed significant inconsistencies within the legal framework governing child employment, highlighting the need for comprehensive reforms and advocacy interventions to address existing gaps and guarantee sufficient safeguards for children involved in child employment.

### **4.2 Recommendations**

By implementing the following recommendations, the government and all the relevant stakeholders should work towards creating a more equitable and protective environment for children particularly those who are in employment and child domestic workers in Kenya.

The efforts will further guarantee the safeguarding of human rights, well-being, and future development of the children who are vulnerable and those at risk of getting into child employment, domestic servitude, and various forms of exploitation. Indeed, previous studies have shown that there is a thin line between child employment and child labour.

The following are specific recommendations that should be adopted by relevant stakeholders to strengthen protection for those children who are in employment, those at risk of falling into this category, and every child who is at risk of any form of exploitation.

#### **4.2.1 Recommendation on Legal Reforms**

- 1) There is an urgent need for review and harmonization of existing legislation, including the Children Act, Employment Act, Basic Education Act, Industrial Training Act and Counter Trafficking in Persons Act, to resolve inconsistencies in the minimum age of employment for a child, clarify a child's right to basic education, allow children to be employed under written contracts, prescribe working hours for all employed children, redefine the employment of children with their best interests in mind, prescribe break times and leave for children in employment, establish a

consent framework before the employment of a child, revise the definition of worst forms of child labour and child trafficking for clear enforcement and punitive measures for offenders.

- 2) The Cabinet Secretaries for the Ministry of Labour and Social Protection and the Ministry of Education should lead the law reform process of the above laws and ensure vulnerable children are protected using alternatives such as stronger social protection systems.
- 3) The Cabinet Secretary (C.S) responsible for matters relating to labour in consultation with the Cabinet Secretaries responsible for matters relating to children's affairs and education, should develop regulations prescribing the terms and conditions of work and the kind of work that children aged between age thirteen and eighteen may engage in, provided that the regulations take into consideration the best interests of these children and support the realization of the children rights.

*Note: This recommendation is in line with Section 18 of the Children Act, which had assigned a one-year timeline from the date of the commencement of the Children Act, (26th July 2022). However, the timelines have lapsed yet these regulations are in draft and proper public participation on the issue should be upheld.*

- 4) To achieve the elimination of child labour, laws setting the minimum age for child work should be embedded in such comprehensive policy responses outlined in Recommendation No. 146 which accompanies ILO Convention No. 138. It states that national policies and programmes should equally provide for:
  - Poverty alleviation and the promotion of decent jobs for adults, so that parents do not need to resort to child labour;
  - Free and compulsory education and provision of vocational training; extension of social security and systems for birth registration; and
  - Appropriate facilities for the protection of children, and adolescents who work.
- 5) To expedite the law review, domestication of ILO Convention (No. 189) on Domestic Workers of 2011 and the development of the above regulations. The C.S Labour and social protection should ensure proper public consultations, civil society organizations, private sector and religious organizations should commence public awareness and advocacy on the issue of child employment and create opportunities for members of the public to give input to the law reforms and the regulations on child employment and light work and submit their memoranda.

#### **4.2.2 Recommendation on institutional registration of employed children**

- 1) There is a need for Parliament to amend the Employment Act and establish a state agency within the Ministry of Labour and Social Protection which combines the Directorate of Children Services, the National Social Protection Secretariat and the

State Department of Labour and Skills Development. This agency should solely be responsible for keeping a register of all employed children and their employers.

- 2) This State Agency should be required to give consent before the employment of children generally in certain fields which are likely to be used to abuse children. For instance, consent should be obtained before the employment of children in advertisement, cultural and artistic fields. Such consent must also be obtained in cases of vulnerable children like orphans who are often prone to exploitation.
- 3) The proposed amendment to the Employment Act should obligate every person who employs a child to register with the proposed State Agency. Such registration should include the particulars of the child such as age, the nature and terms of employment.
- 4) This registration will make it easier to monitor the data of the children employed in the country, the changing trends in child employment, to hold employers accountable in cases of the worst forms of child labour and protect employed children from exploitation.

#### **4.2.3 Recommendation on Enhanced Enforcement of existing and revised laws**

- 1) The Ministry of Labour and Social Protection should strengthen enforcement mechanisms to address challenges such as poverty-driven reliance on child labour, lack of awareness among employers and the public, corruption, and weak penalties.
- 2) There is need for the Secretary Children Services to review the Child Protection Information Management System (CPIMS) to capture cases of child labour under different sub-categories of child domestic work and child trafficking as this will provide proper data for enhanced follow-up.
- 3) Train the children, labour officers, and Chiefs on distinct ways of identifying cases of child Labour and child domestic work and ensure proper capturing of the said data in respective information management systems.
- 4) The permanent secretary in the Ministry of Labour and Social Protection should lead other Ministries, Counties, Departments, and Agencies (MCDAs) in dialogues on how best to address the emerging trends and effective implementation of existing laws.
- 5) The Commissioner for Labour should consistently deploy adequate numbers of occupational and safety health officers to monitor sectors where child employment and child domestic work is prevalent.

- 6) Undertake regular monitoring and inspection processes, enhance coordination between enforcement agencies such as the Directorate of Children Services, Counter-Trafficking in Person Officers, Police Officers, Immigration Officers, the National Government Administration Officers (NGAO), relevant Country Government officers, CSOs and community leaders, strengthen enforcement efforts.
- 7) Undertaking a nationwide child labour survey to collect data on demographic and socio-economic characteristics of working children, identify trends, and impacts of child domestic work on children; to influence evidence-based policy and laws reforms and appropriate intervention programmes.

#### **4.2.4 Recommendation on Public Awareness and Education**

- 1) The Commissioner for Labour and Secretary of Children Services should lead other stakeholders in undertaking public awareness campaigns and educational programs to improve understanding of child rights, child employment and labour laws and promote community involvement in combating child exploitation.
- 2) Civil society, religious institutions and other stakeholders should develop awareness campaigns and initiatives to educate employers, parents, and children themselves about their rights and responsibilities and the effects of child employment as well as child labour.
- 3) The Cabinet secretary in charge of the Treasury should ensure adequate resourcing of the MCDAs starting with the Ministry of Labour and Social Protection (labour, social protection, children services and counter-trafficking directorates), Ministry of Education, National police service, Kenya National Commission on Human Rights, National Gender and Equality Commission to support public sensitization on child labour and strengthen accountability mechanisms.

#### **4.2.5 Recommendation on Cross-Border and Multi-Sectoral Collaboration**

- 1) The Commissioner for Labour recognizing the complexity of the issue at hand, should lead efforts to foster stronger collaboration between government agencies, County Governments, civil society organizations, religious institutions, private sector actors, international partners, and communities to develop holistic approaches to addressing the challenges of child employment and particularly child labour.
- 2) The Commissioner for Labour and Secretary of Children Services should develop clear guidelines for their respective officers to guide them on how to enhance access to safeguarding monitoring and reporting mechanisms and secure justice and redress for children rescued from child labour in domestic work and other settings.

- 3) Undertake a mapping of the key stakeholders to be engaged regularly to combat child domestic work and safeguard the right of children to education and their best interest, beyond the usual stakeholders.
- 4) The labour commissioner should work closely with the Secretary of Children Services to ensure closer monitoring of cases of child domestic workers and use the data to map out vulnerable children, for rescue and reintegration back to school and link them with social protection services.
- 5) The collaborations should also be extended across borders and beyond to ensure effective laws and regulatory frameworks that protect Kenyans abroad as well as migrants in Kenya who are in child employment or at risk of such and any potential exploitation. should involve coordinated efforts across regions and jurisdictions, especially in sectors with complex supply chains.

#### **4.2.6 Recommendation on Strengthening the Protection and Support for Vulnerable Children**

- 1) The Department of Social Protection should prioritize the protection and support of vulnerable children, including those at risk of domestic servitude, exploitation, trafficking, or online abuse. This includes retargeting vulnerable children including the intersex and those in domestic work and where necessary implementing the ultra-poor graduation model of social protection to address the generational cycle of poverty and illiteracy.
- 2) The Government through various MCDAs and CSOs should collaborate and strengthen child labour reporting, and referral pathways, providing shelters/ safe spaces, trauma-informed counseling, and offering comprehensive support services for children rescued from domestic work and other forms of child labour.
- 3) CSOs should support the Survivors of domestic servitude, child labour and child trafficking by organizing them in a coordinated manner to amplify their voices and influence comprehensive laws and intervention by the government and curd child exploitation in any form.

#### **4.2.7 Recommendation on Preventive Measures**

- 1) The government through the joint initiatives of key MCDAs and stakeholders mentioned above, should implement preventive measures to address emerging trends such as online child exploitation, the involvement of children in hazardous activities like scrap metal collection, and the influx of migrant children seeking employment. This may involve leveraging technology for monitoring and detection, enhancing border controls, and addressing root causes such as poverty and displacement.

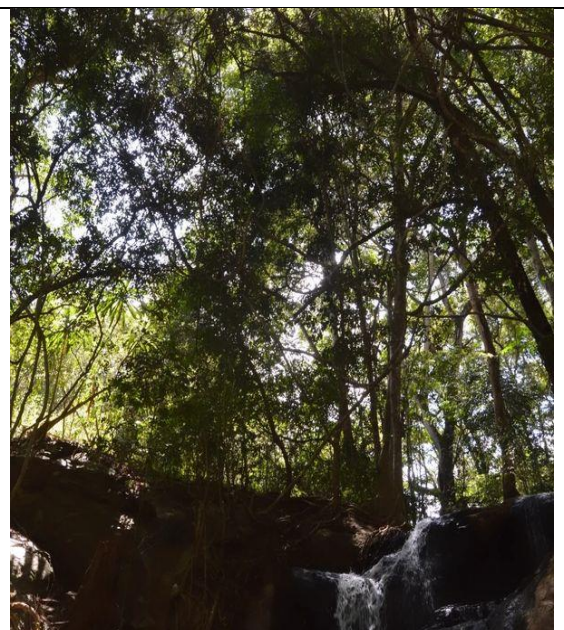


- 2) CSOs should revamp their awareness campaigns and educate society on the need for a change of attitude that is comfortable when children are pushed to child employment as part of sharing the economic burden. The impacts of unregulated child employment and child labour are multifaceted and the meagre payments cannot wholly address the economic hurdles of the family until the root cause is addressed effectively.
- 3) In general, the Government should collaborate with civil society organizations, private sector actors and the public to strengthen child protection and safeguarding mechanisms and advocacy at the county, national, and regional levels to curb unnecessary child employment, secure the rights of every child, be it a Kenyan citizen or migrant. By doing so end domestic servitude and all forms of exploitation.

I recall the words of the Late Prof. Wangari Maathai, Nobel Peace Prize Laureate, who explained her tree-planting journey under the green belt movement and encouraged people to stand up for something.

She said, ***“It’s the little things citizens do. That is what will make the difference. My little thing is planting trees.”***

Photo credits courtesy of Greenbelt Movement Facebook page.<sup>13</sup>



- 4) Certainly, the duty bearers and right holders can all choose to stand up today for the vulnerable children who find themselves forgotten by the societal support system, social protection systems, and even the existing legal frameworks and end up in child domestic work and other forms of exploitation. It is time to stand up and Act. The policy brief annexed below will be used as an advocacy tool for ensuring the above recommendations are implemented and increase public awareness of the impacts of child employment, inadequate enforcement, and how easily this translates to child labour and other forms of exploitation.

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<sup>13</sup> [https://m.facebook.com/story.php/?story\\_fbid=824710363032949&id=100064819777406](https://m.facebook.com/story.php/?story_fbid=824710363032949&id=100064819777406)

## Annex 1: Policy Brief

See the policy brief here: -

<https://drive.google.com/file/d/1G2x49J-dwm1ISnbq7hplw35RtOQHeDaH/view?usp=sharing>

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