

**THE ADEQUACY OF LEGAL AND POLICY FRAMEWORK
GOVERNING THE RIGHT TO BASIC EDUCATION BY CHILDREN
WITH LEARNING DISABILITIES IN KENYA**

SUBMITTED BY:

JULIE L.M. MWANGI

REGISTRATION NO: G62/7067/2017

**A Thesis Submitted to the University of Nairobi in Partial Fulfilment of
the Requirements for the Award of the Degree of Master of Laws**

(LLM)

2020

DECLARATION

I Julie Lucy Mwihaki Mwangi hereby declare that this is my original work and has not been presented for the award of a degree or any other award in any other University. Where works by other people have been used, references have been provided.

Student: Julie Lucy Mwihaki Mwangi

G62/7067/2019

Signed: _____ Date: _____

APPROVAL

This thesis titled '*The Adequacy of the Legal and Policy Framework Governing the Right to Basic Education by Children with Learning Disabilities in Kenya*' has been done under my supervision and has been submitted to The University of Nairobi, School of Law for examination with my approval as the candidate's supervisor.

Supervisor: **PROF. WINIFRED KAMAU**

Signed: _____ Date: _____

DEDICATION

This thesis is dedicated to my mum, Alice Wangui Mwangi. She was an educator for over 30 years and showed me the need for specialized attention to children with learning disabilities. Her passion for education inspired this study.

I also dedicate this work to all the teachers in Kenya and around the world making the change to ensure that children with learning disabilities have access to basic education.

ACKNOWLEDGEMENTS

I would like to thank the Almighty God for His grace and provision throughout my postgraduate study.

I want to express my heartfelt gratitude to my parents, Jethro and Alice Mwangi who have supported me and encouraged me to pursue this degree and importantly for raising me to be the person that I am today. Last but not least, I would like to thank my supervisor, Prof. Winifred Kamau, for her input and patience while supervising me.

LIST OF INTERNATIONAL AND REGIONAL INSTRUMENTS

African Charter on Human and Peoples' Rights (1986)
African Charter on the Rights and Welfare of the Child. (1990)
African Youth Charter (2006)
International Covenant on Economic Social and Cultural Rights (1966)
Salamanca Statement and Framework for Action on Special Needs Education (1994)
Universal Declaration of Human Rights (1948)
United Nations Convention on the Rights of the Child (1989)
UNESCO Convention against Discrimination in Education
United Nations Convention on the Rights of Persons with Disabilities (2006)
United Nations, Millennium Development Goals (2000-2015)
United Nations, Sustainable Development Goals (2015-2030)

LIST OF STATUTES

Kenyan Constitution of 2010
Social Assistance Act, No 24 of 2013
Basic Education Act, No 14 of 2013
Persons with Disabilities Act, No 14 of 2003
Children Act, No 8 of 2001

STATUTES AND OTHER LEGISLATIVE INSTRUMENTS OUTSIDE KENYA

UNITED STATES OF AMERICA

The Americans with Disabilities Act, 1990
Individual with disabilities Education Act (20 U.S.C. § 1401 (30))
Public Law 101–336(1990) Americans with Disabilities Act.
Public Law 94–142, the Individuals with Disabilities Education Act, or IDEA), 20 U.S.C.
§§ 1400 et. seq.

CANADA

Ontario *Human Rights Code*, R.S.O.1990, c. H.19 [*Code*]

SOUTH AFRICA

Social Assistance Act No. 59 of 1992

South African Schools Act No. 84 of 1996.

Education White Paper 6 on Special Needs Education: Building an inclusive education and Training system. July 2001

LIST OF CASES

Cedar Rapids v. Garrett, 526 U.S. 66 (1999)

Equal Education and Another v Minister of Basic Education and Others (CCT4/00) [2000]
ZACC 11; 2000 (4) SA 757; 2000 (10) BCLR 1051 (18 August 2000)

Florence Co. v. Carter, 510 U.S. 7 (1993)

Gabriel Nyabola v Attorney General & 2 others [2014] eKLR

John Kiplangat Barbaret & 3 others v Attorney General & 4 others [2014] eKLR

Kenya Society for the Mentally Handicapped v Attorney General and Others Nairobi
Petition No. 155A of 2011 (Unreported):

School Committee of Burlington v. Mass. Department of Education, 471 U.S. 359 (1985)

Zobrest v. Catalina Foothills School District, 509, U.S. 1 (1993)

Brown v. Board of Education, 347 U.S. 483 (1954)

DH v The Czech Republic (57325/00) ECHR (13 November 2007)

TABLE OF CONTENT

DECLARATION.....	ii
APPROVAL	ii
DEDICATION.....	iii
ACKNOWLEDGEMENTS	iv
LIST OF INTERNATIONAL AND REGIONAL INSTRUMENTS.....	v
LIST OF STATUTES	v
STATUTES AND OTHER LEGISLATIVE INSTRUMENTS OUTSIDE KENYA .	v
UNITED STATES OF AMERICA.....	v
CANADA	vi
SOUTH AFRICA	vi
LIST OF CASES.....	vi
TABLE OF CONTENT.....	vii

CHAPTER ONE

INTRODUCTION

1.1 Background to the Problem	1
1.2 Statement of the Problem.....	5
1.3 Objectives of the Study.....	6
1.3.1 Overall Objective.....	6
1.3.2 Specific Objectives	6
1.4 Research Questions.....	7

1.5 Justification of the Study	7
1.6 Hypotheses of the Study	8
1.7 Theoretical Framework.....	i
1.7.1 Human Rights Based Approach.....	9
1.7.2 Rawls: Justice as Fairness Theory	11
1.8 Literature Review.....	12
Conclusion	19
1.9 Research Methodology	20
1.10 Chapter Breakdown	21
Chapter One	21

CHAPTER TWO

CHALLENGES FACING CHILDREN WITH LEARNING DISABILITIES IN ACCESSING EDUCATION IN KENYA

2.0 Introduction.....	22
2.1 High Prevalence and Low Detection of Learning Disabilities	23
2.1.1 Discrimination in Access to Education and Social Factors	25
2.1.2 Lack of Inclusive Learning Environment	27
2.1.3 Inadequate Provision of Development Programmes for Children with Learning Disabilities	29
2.1.4 Lack of Policy on Assistive Technology and Adaptive Equipment	30
2.2 Deficiencies in the Mode of Delivery of Special-Needs Education	32

2.2.1 Inadequate Access to Self-Selected Literature	32
2.2.2 Fluency in Reading and Comprehension of the Regular Curriculum.....	33
2.2.3 Lack of Special Examination Papers for Children with Learning Disabilities	34
2.3 Structural Challenges in Educating Children with Learning Disabilities.....	35
2.3.1 Physical Barriers to a Free Learning Environment.....	35
2.3.2 Inadequate ICT Adoption	36
2.4 Conclusion	38

CHAPTER THREE

KENYA’S LEGAL, POLICY AND INSTITUTIONAL FRAMEWORK FOR CHILDREN WITH SPECIAL NEEDS

3.0 Introduction.....	39
3.1 Historical Background on Education in Kenya	39
3.2 Policy Framework.....	42
3.2.1 A Policy Framework for Education, Training and Research.....	42
3.2.2 National Special Needs Education Policy Framework in Kenya (2009) (“NSNE”).....	44
3.2.3 Sector Policy for Learners and Trainees with Disabilities (2018).....	47
3.2.4 Kenya Implementation Guidelines Sector Policy for Learners and Trainers with Disabilities (2018) (“the SPLTD Guidelines”).....	51
3.3 Legal Framework	52

3. 3.1 International and Regional Framework	52
3.3.2 International Instruments	52
3.3.3 Regional Instruments	56
3.3.4 National Legal Framework	58
3.3.4.1 The Constitution of Kenya (2010)	58
3.3.4.2 Children Act, 2001	60
3.3.4.3 Persons with Disabilities Act, 2003	61
3.3.4.4 Basic Education Act, 2013.....	63
3.3.4.5 Social Assistance Act, 2013.....	65
3.3.4.6 Case Law.....	66
3.4 Conclusion	69

CHAPTER FOUR

COMPARATIVE ANALYSIS OF MODELS USED TO ACCESS EDUCATION BY CHILDREN WITH LEARNING DISABILITIES; A CASE STUDY OF SOUTH AFRICA, CANADA AND UNITED STATES OF AMERICA

4.0 Introduction.....	70
4.1 United States of America	71
4.1.1 The Americans with Disabilities Act.....	72
4.1.2 Individuals with Disabilities Education Act (IDEA) 1990	73
4.2 South Africa	76
4.2.1 White Paper No. 6 on Special Needs Education.....	78

4.2.2 Social Assistance Act.....	80
4.3 Canada.....	80
4.3.1 Ontario Province on Students with disabilities	81
4.4 Conclusion	84

CHAPTER FIVE

CONCLUSION AND RECOMMENDATIONS

5.0 Conclusion	86
5.1 Thesis Summary & Findings	87
5.2 Recommendations.....	89
5.2.1 Recommendation to the National Government.....	89
5.2.2 Recommendation to County Governments.....	90
5.2.3 Recommendation to Parents and Communities	90
5.3 Thesis Conclusion.....	91
BIBLIOGRAPHY	93

CHAPTER ONE

INTRODUCTION

1.1 Background to the Problem

Disability means a “physical, sensory, mental or other impairment including any visual, hearing, learning or physical incapability which impacts adversely on social, economic or environmental participation”¹. Learning Disabilities (“LD”) refer to a heterogeneous group of disorders manifested by significant difficulties in the acquisition and use of listening, speaking, reading, writing, reasoning, or mathematical abilities.²

These disorders are intrinsic to an individual, and are symptomatic to persons suffering from various dysfunctions in the central nervous system.³ LD persist in various forms across the life span, with its precursors—manifested in different forms, such as language delays or language deficits in early childhood—appearing before formal schooling and continuing into adulthood.⁴

Students with learning disabilities face many challenges in pursuit of their education such as peer bullying, inefficient pedagogical approaches, academic and social exclusion.⁵ This is largely attributed to lack of capacity building in the very teachers that instruct these

¹ Persons with Disability Act 2003

² National Joint Committee on Learning Disabilities, “Learning Disabilities: Issues on Definition. A Position Paper of the National Joint Committee on Learning Disabilities, January 30, 1981.” *Learning Disability Quarterly*, vol. 6, no. 1, 1983, 42–44. *JSTOR*, www.jstor.org/stable/1510862; See also Grace Kwamboka Omete Rasugu, *Nature and Prevalence of Learning Disabilities Among Standard Three Primary School Pupils in Starehe Division of Nairobi Province, Kenya*’ Masters of Education Thesis, University of Nairobi 2004, 15.

³ Ibid

⁴ Ibid

⁵ Melinda Elchhorn, “Policy and Practice in Postsecondary Education: The Transitional experience for students with learning disabilities in India” Working Paper 2025-01, November 2015, available at <

students.⁶ Early childhood education is so foundational in the growth of a child and children with learning disability need this more, physical and cognitive development, to enable them to be in an inclusive environment⁷

In Kenya is estimated that out of 1,000 persons, 25 to 30 of them live with various forms of learning disabilities. Studies have placed the prevalence of moderate to severe learning disabilities at between 3 to 4 out of 1000 persons.⁸ 39 percent of children with learning disabilities sampled were attending mainstream primary schools, and 9 percent were attending high school.⁹ It is also reported that 39 percent of the children with disabilities drop out of school due to their disability and lack of fitting education system for their peculiar thus their marginalization.¹⁰

Needless to say, education is a prerequisite to national development as it lays the foundation for unlocking and protecting human rights.¹¹ For children with learning disabilities, education is even more critical as it gives them an opportunity to learn, interact and enhance their full potential. In the past, scholars and educators opined that intellectual disability was static and not dynamic and therefore, nothing could be done to improve the functionality of individuals with disability.¹²

⁶ Ibid

⁷ *Salamanca Statement and Framework for Action on Special Needs Education* (1994), para 6

⁸ Kenya National Bureau of Statistics, *Census 2009 Summary of Results; Persons with disability*, Available at <<https://www.knbs.or.ke/number-of-persons-with-disability/>> accessed on 2 December 2018; Grace Kwamboka Omete Rasugu, *Nature and Prevalence of Learning Disabilities Among Standard Three Primary School Pupils in Starehe Division of Nairobi Province*, Kenya Masters of Education Thesis, University of Nairobi 2004, 6.

⁹ Ibid.

¹⁰ Kenya National Survey for Persons with Disability Main Report, National Agency for Population and Development and Kenya National Bureau of Statistics, November 2008

¹¹ Republic of Kenya, "The National Special Needs Education Policy Framework, July 2009"

¹² M.J. Chomba, G. Mukuria P.W.; Kariuki; S.Tumuti, B.A. Bunyasi, 'Education for Students with intellectual Disabilities in Kenya: Challenged and Prospects'

However, today, the converse is true. Studies show that the functionality of children suffering from mild to moderate learning disabilities can be improved and as such, they are no longer be classified as intellectually disabled *strictu sensu*.¹³ Whereas some learning disabilities are curable, other conditions like dyslexia¹⁴, dyspraxia¹⁵, dyscalculia¹⁶ and dysgraphia¹⁷ that are not curable. These conditions affect the ability to learn in specific areas, and not a person's overall intelligence.¹⁸

Therefore, there is need to have a special system of education or these children. Special needs education (SNE) refers to the education provided to learners with special needs requiring modified curriculum delivery, methods, education resources, mode of communication as well as modified learning environment to cater for individual differences among these learners.¹⁹ SNE can be used to cater for gifted and talented learners as well as learners with learning disabilities so as to place them in the least restrictive environment appropriate addressing their needs.²⁰

The law is forever a tool for social change and such, the Constitution of Kenya (2010), Article 27 ensures equality for all and freedom from discrimination. Furthermore, Article

http://erepository.uonbi.ac.ke/bitstream/handle/11295/84802/Chomba_Education%20for%20Students%20with%20Intellectual%20Disabilities%20in%20Kenya.pdf?sequence=2&isAllowed=y

¹³ National Institute of Child Health and Human Development, 'What are the treatments to learning disabilities' Available at <https://www.nichd.nih.gov/health/topics/learning/conditioninfo/treatment> accessed on 2 December 2018; see also *United States National Institute of Child Health and Human Development reports*.

¹⁴ a general term for disorders that involve difficulty in learning to read or interpret words, letters, and other symbols, but that do not affect general intelligence.

¹⁵ a developmental disorder of the brain in childhood causing difficulty in activities requiring coordination and movement.

¹⁶ severe difficulty in making arithmetical calculations, as a result of brain disorder.

¹⁷ inability to write coherently, as a symptom of brain disease or damage.

¹⁸ Ibid 15

¹⁹ National Special Needs Policy (n6)

²⁰ National Institute of Child Health and Human Development (n11)

56(b) empowers the minority and marginalized groups as well as offering them special opportunities in educational and economic fields. Kenya recognizes that SNE is key in accelerating the realization of Education for All (EFA) and the Millennium Development Goals (MDGs) ²¹ now referred to as Sustainable Development Goals (SDGs). SDG 4's goal is aimed at quality education that has seen a 91% enrollment in primary education in developing countries from 2000 to 2015²². To this end, Sessional Paper No.1 of 2005 also reiterates the importance of SNE as human capital development that empowers those who are marginalized to participate in mainstream education sector.²³

There are however, special schools for these children that technically segregate them from the learners in 'regular' schools which has been criticized as being against SDG four that's calls for inclusive and equitable quality education and promote lifelong learning opportunities for all. ²⁴Indeed this issue has been raised in other jurisdictions such as the United States and before the European Court of Human Rights.²⁵

The right to education is recognized as a universal and inalienable right.²⁶ Article 43(1)(f) of the Constitution of Kenya 2010 cognizes that "every person has the right to education" and in particular that "every child has the right to free and compulsory education."

²¹ Republic of Kenya, "The National Special Needs Education Policy Framework, July 2009"

²² <http://www.ke.undp.org/content/kenya/en/home/sustainable-development-goals/goal-4-quality-education.html>

²³ Ministry of Education, Science and Technology, "Sessional Paper No. 1 of 2005 on A Policy Framework for Education, Training and Research"

²⁴ Concluding observations for Hungary CRPD/C/HUN/CO/1 (2012) para 39; Concluding observations for Spain CRPD/C/ESP/CO/1 (2011) para 43; Concluding observations for China CRPD/C/CHN/CO/1 (2012) para 35; Concluding observations for Australia CRPD/C/AUS/CO/1 (2013) para 45; Concluding observations for Austria CRPD/C/AUT/CO/1 (2013) para 40.

²⁵ DH v The Czech Republic (57325/00) ECHR (2007) para 175.

²⁶ National Gender and Equality Commission, 'Access to Basic Education by Children with Disability in Kenya' (2006)

It is a Constitutional dictate that, the State is to put in place affirmative action programmes to ensure that the youth access relevant education and training²⁷ and that minority groups are provided special opportunities in education.²⁸ In addition, Article 27 guarantees equality and freedom from discrimination.²⁹ The Basic Education Act³⁰ and the Children Act³¹ is equally emphatic on the right to free and compulsory basic education premised on equality. The National Special Needs Education (NSNE) Policy 2009 also adds more details to the existing statutes on enhancing access, transition rates and retention of learners with special needs in formal learning institutions. These domestic laws are also complimented with various International and regional instruments and policy framework in education and children matters as espoused in this paper. The paper therefore espouses the position of law and policy in promoting the education of children with learning disabilities with emphasis on public schools.

1.2 Statement of the Problem

The right to education is well provided for in international law ratified by Kenya by virtue of Article 2(6) of the Constitution and in national instruments. Kenya equally has domestic laws that touch on the subject. The legal framework in place is generic and does not identify the particular needs of children with learning disabilities and tends to lump disabilities into one category. Therefore, children with learning disabilities continue to experience numerous challenges such as discrimination and neglect thus hindering their proper access

²⁷ Article 55

²⁸ Article 56

²⁹ The Constitution of Kenya 2010

³⁰ Basic Education Act 2013

³¹ Children Act 2001

to education which in effect block them from market opportunities and productivity in the society.

This therefore begs the question on why despite having updated and progressive laws and policies on the access to basic education, full potential of children with learning disabilities is yet to be realised.

1.3 Objectives of the Study

1.3.1 Overall Objective

This study's overall objective is to analyse the right to access to education by children with learning disabilities in Kenya.

1.3.2 Specific Objectives

- i) To highlight the challenges faced by children with learning disabilities in accessing education in Kenyan schools;
- ii) To analyse Kenya's legal, policy and institutional framework governing access to education for children with learning disabilities with a view to assess their efficiency;
- iii) To identify international best practices from South Africa, Canada and United States on access to education for children with learning disabilities with a view of benchmarking and enhancing access to education for children with learning disabilities in Kenya; and
- iv) To offer recommendations on how to enhance the legal and policy framework governing the right to access to basic education for children with learning disabilities.

1.4 Research Questions

The study addresses the following questions:

- i) What are some of the challenges that children with learning disabilities face in accessing education in Kenya schools?
- ii) What are the gaps in the legal, policy and institutional framework that restrict access to basic education by learners with learning disabilities?
- iii) What are the lessons, on access to education by children with learning disabilities, can Kenya borrow from South Africa, Canada, and the United States of America?
- iv) How can the aforementioned lessons be implemented to better enhance the legal and policy frameworks governing the access to basic education challenges faced by children with learning disabilities in Kenya?

1.5 Justification of the Study

Education is a critical tool to liberate the mind from the shackles of poverty and ignorance. For children with learning disabilities, education is critical as it gives them an opportunity to learn, interact and unlock their full potential. Just like their regular counterparts, children with learning disabilities have the right to free and compulsory basic education. However, without special measures in place, this fundamental right remains a fantasy to the detriment of these children.

Since the inception of free primary education, Kenya has recorded a massive enrolment of children in schools. Unfortunately, students with learning disabilities have not gained as much from this system given that most of the schools are privately owned with high fee

that most parents cannot afford. Government has also failed to establish structures to oversee the entire process of assessment that includes identification and referral, categorization, procedural safeguards and individualized plans. The very idea of cocooning students with learning disabilities in special schools is in itself a curtailing.

Premised on the above, the study of this topic is extremely necessary to unearth, discuss and enlighten the stakeholders of the challenges that learners with disability face. The study is crucial since the prevalence of moderate to severe learning disabilities is between 3 to 4 out of every 1000 people while various forms of learning disability are at 25 to 30 of every 1000 persons in Kenya³². This study will allow specific policy and legal frameworks to be set up to cater for children with learning disabilities. Equally, the comparative analysis that the paper is undertaking is to offer the international best practice for the policy maker to consider in revising and enacting the relevant policy and legislations.

1.6 Hypotheses of the Study

This study is anchored on the following hypotheses:

- i) Children with learning disabilities face unique challenges in accessing education in Kenya;
- ii) Kenya's legal, policy and institutional framework governing the access to education by children with learning disabilities has not adequately addressed the challenges faced by children with learning disabilities.

³² National Joint Committee on Learning Disabilities, "Learning Disabilities: Issues on Definition. A Position Paper of the National Joint Committee on Learning Disabilities, January 30, 1981." *Learning Disability Quarterly*, vol. 6, no. 1, 1983, 42–44. *JSTOR*, JSTOR, www.jstor.org/stable/1510862

1.7 Theoretical Framework

1.7.1 Human Rights Based Approach

A human rights based approach (HRBA) is about empowering people to know and claim their rights and increasing the ability and accountability of individuals and institutions who are responsible for respecting, protecting and fulfilling rights.³³ The goal of a human rights-based approach to education is to assure every child of quality education that promotes the right to dignity and optimum development.

This approach embodies three interlinked and interdependent dimensions. It contends that human rights related to education cannot be realized unless and until all three are addressed: The right of access to education, the right to quality education and the right to respect within the learning environment³⁴

Gauri and Gloppen³⁵ aver that the HRBA is a principle that justify demands against privileged actors, made by the poor or those speaking on their behalf, for using national and international resources and rules to protect the crucial human interests of the globally or locally disadvantaged. HRBAs theory suggests that treaty based HRBAs are more likely to achieve enforcement or compliance at the national level through domestic political mechanisms, such as civil society organizations, courts, and bureaucratic entrepreneurs,

³³ <http://careaboutrights.scottishhumanrights.com/whatisahumanrightsbasedapproach.html> accessed on 10 August 2019

³⁴ UNESCO, UNICEF; A Human Rights-based Approach to Education for All (2007) <https://www.unicef.org/publications/files/A_Human_Rights_Based_Approach_to_Education_for_All.pdf> accessed on 1 August 2019

³⁵ Varun Gauri and Siri Gloppen, 'Human Rights-Based Approaches to Development: Concepts, Evidence, and Policy', *Polity* (2012)., 485-503.

than at the international or regional levels through quasi-judicial enforcement. The evidence to date indicates that treaties can have some limited direct, contemporaneous impact on development outcomes.³⁶

Simmons observes that the strongest effects of international human rights treaties are expected to be visible at the national, rather than the international or regional, levels. The literature has developed an approach to human rights treaty compliance called the domestic politics theory of treaty compliance. In that approach, compliance requires domestic pressure on the government. The pressure might take the form of NGO- and civil society-initiated mobilization on behalf of treaty goals, the judicial application of treaties and the human rights norms embedded in them to domestic settings, or the empowerment of elements of the executive whose goals are consistent with treaty objectives.³⁷

HRBA is about ensuring that both the standards and the principles of human rights are integrated into policymaking as well as the day to day running of organisations. This is key when it comes to children with learning disabilities and their ability to access basic education.

³⁶ See, for example, DFID, Department for International Development (1997) "Realising human rights for poor people.", UNDP, United Nations Development Program, 2000. Human Development Report. New York: Oxford University Press, UNESCO, United Nations Educational, Scientific, and Cultural Organization. 2000. World Education Report 2000: The Right to Education: Towards Education for All Throughout Life. Paris: Unesco. Summary reviews are Hamm, B.I. 2001. "A human rights approach to development." Human Rights Quarterly 23:1005-1031, Piron, Laure-Helene. 2005. "Rights based Approaches and Bilateral Aid Agencies: More Than a Metaphor?" IDS Bulletin 36:19-30.

³⁷ Beth A. Simmons, *Mobilizing for Human Rights: International Law in Domestic Politics* (New York: Cambridge University Press 2009).

1.7.2 Rawls: Justice as Fairness Theory

The theory of justice as propounded by John Rawls in which he describes his concept of justice to comprise two main principles; liberty and equality.³⁸ The two principles are as follows: first, each person participating in a practice, or is affected by it, has an equal right to the most extensive liberty compatible with a like liberty for all.

Secondly, inequalities are arbitrary unless they are reasonable to expect that they will work out for everyone's advantage (more so for the least advantaged), and provided that the positions and offices to which they attach, or from which they may be gained, are open to all.³⁹

Rawls first's conception of rights is liberty oriented. He compares equality to liberty. The principle is relevant to this study as it places emphasis on equality and non-segregation of the students with learning disabilities. Rawls therefore opines that there is no justice without fairness. To put this into context, children with learning disabilities are not entitled to lesser rights or liberty than others without learning disabilities.

The second principle advocates equal distribution of primary social resources unless there is justification to treat people differently. Ideally, the differential theory is concerned about differential treatment that is aimed at restoring justice in the original position. Justice requires that any inequalities must benefit all citizens, and particularly those who are "marginalised."

³⁸ Jan Garrett , 'John Rawls on Justice',(2002) <<https://people.wku.edu/jan.garrett/ethics/johnrawl.htm>> accessed on 17 August 2019

See also, Daniel W/Gebriel, Hassen Mohamed, "Teaching Material on Jurisprudence," (2008) Ethiopian Justice and Legal Research Institute

³⁹ Ibid

This theory anchors the doctrine of positive discrimination a concept enunciated in the Kenyan Constitution. Indeed, the Constitution emphasises that everyone is entitled to the right to equality and freedom from discrimination on grounds of one's disability⁴⁰ but with allowance for positive discrimination.⁴¹ Further, the State is required to have in place affirmative action programmes designed to ensure that minorities and marginalized groups are provided with special opportunities in educational and economic fields.⁴²

1.8 Literature Review

Although there exists a wealth of literature on access to education generally from a human rights perspective, there is an apparent scarcity of literature relating to access to basic education by children with learning disabilities in Kenya. Scholars and legal practitioners have penned down their views in order to inform the right trajectory to be pursued in furtherance of this debate.

A review of the available writings hereunder, sheds some light into the existing knowledge and the gaps that this research paper ultimately seeks to fill. In so doing, we cluster the literature based on their thematic areas that each article addresses on the subject. The literature covered entails disability Inclusion and reasonable accommodation; discrimination; access to basic education; and policy framework inadequacies on the subject. We therefore consider these articles under the four thematic areas herein under:

Disability Inclusion and Reasonable Accommodation

⁴⁰ The Constitution of Kenya 2010, Article 27(4)

⁴¹ Article 24 of the Constitution.

⁴² The Constitution of Kenya 2010, Article 56(b)

Aseka and Kanter⁴³ interrogate the Basic Education Act, 2013 in respect to access to basic education for children with special needs and faults it on various grounds. The article states that 67% of persons with disabilities have some primary education⁴⁴ and of those only nine percent attended integrated public schools. The authors aver that the Act is contradictory as it prohibits discrimination of admission to school on any ground including disability⁴⁵ but also provides for special schools in Part IV⁴⁶ which is discriminatory in the quest for inclusive education thus the Act fails to comply with the fundamental principle of equality. They opine that the purpose of the Act is to ensure that all children in Kenya are provided with a free and compulsory primary education. Both children with and without disabilities should be treated ‘equally’ which involves both the same treatment as well as different treatment based on the need of some children for accommodations. However, the Act creates special schools for children with disabilities without any legitimate justification.⁴⁷ The right of equality in education must see the enactment of laws and policies that ensure children with learning disabilities receive reasonable accommodations and modification required to access basic education on an equal basis with non-disabled children. Crucially, the learned authors opine that whereas the Convention on Rights of People with Disability (“CRPD”) which adopts a social model of disability that focuses on environmental barriers, the Kenyan Basic Education, Act, 2013 is centred around medical model of disability. For instance, they state that special schools are defined as those

⁴³ William Aseka and Arlene S Kanter, ‘The Basic education Act of 2013: Why it is one step forward and two steps back for children with disabilities in Kenya’ (2014) African disabilities Rights Year Book, 2. 35,

⁴⁴ Kenya National Survey for Persons with Disabilities Report (2008) 15

⁴⁵ Basic Education Act 2013, s34

⁴⁶ Basic Education Act 2013

⁴⁷ Basic Education Act 2013

schools whose ‘purpose is to help a particular class of children not only attain education but some form of treatment or care.’ They find this definition very perturbing as the focus is people with disabilities as ‘sick’ and in need of a medical intervention rather than locating the environmental barriers that create exclusion and disability.⁴⁸

The Basic Education Act is also criticised for concerning itself with formal equality and not the specific social, economic, and personal characteristics and abilities or disabilities of individual students and the barriers that deter them from obtaining true equality.⁴⁹ Finally, the Act is under scrutiny for failing to comply with the provisions of CRPD on reasonable accommodations. The Act assumes that by merely outlawing differences based on disability, it will protect the rights of the children living with disability without requiring institutions of learning prove it may also entail failing to provide reasonable accommodations to these students.⁵⁰

Parkin et al argue that children with learning disabilities should not be treated less favourably than other students. Education institutions have a duty to make reasonable adjustments to ensure that children who are disabled are not put at a substantial disadvantage compared to children who are not disabled in accessing education services.⁵¹ They also opine that most students with learning disorders have uneven pattern of strengths and weaknesses that affect learning. Learning disabilities are sometimes classed as laziness, lack of motivation and ‘mild impairment concepts’. However, the most prevalent

⁴⁸ William Aseka and Arlene S Kanter, ‘The Basic education Act of 2013: Why it is one step forward and two steps back for children with disabilities in Kenya’ (2014) African disabilities Rights Year Book, 2. 35,

⁴⁹ Ibid

⁵⁰ The Basic Education Act 2013

⁵¹ Elizabeth Parkin, ‘Learning Disability - Overview of Policy and Services Inside: 1. What Is a Learning Disability? 2. Health and Social Care Policies 3. Employment 4. Welfare and Benefits 5. Education 6. Criminal Justice’ 1.

one is the misconception that categorizes learning disability as a generic term for individuals with other disabilities hence diluting the concept which results in policies and practices that create barriers to appropriate services for individual with learning disabilities. This paper therefore clarifies and clears some of these misconceptions for policy formulators.

Discrimination

Kasungu⁵² stated that the provision of SNE is skewed towards four traditional disability areas: hearing impairment, visual impairment, mental handicap and physical handicap, leaving out other categories of disability such as learning disabilities. Her study on the presence of learning disabilities among standard three pupils in Starehe Division, Nairobi Kenya found that that there was 65.2% pass and 34.8% failure in verbal performance compared to 62.0% pass and 38.0% failure in non-verbal performance overall 43.0% pupils who failed had a high risk of having a learning disability.⁵³ She further found that shows that 46.5% of the boys passed compared to 68.8% of the girls. It can also be seen that more than one half of the boys (53.5%) failed the assessment as did about one third (31.3%) of the girls. The result suggests that boys were more likely to be affected by learning disabilities compared to girls.⁵⁴ It is significant to report that respondents demonstrated an adequate knowledge of LD. She also examined the nature of learning

⁵² Grace Kwamboka Omete Rasungu, 'Nature and Prevalence of Learning Disabilities Among Standard Three Primary School Pupils in Starehe Division of Nairobi Province, Kenya' (Masters of Education Thesis, University of Nairobi 2004)

⁵³ Grace Kwamboka Omete Rasungu, 'Nature and Prevalence of Learning Disabilities Among Standard Three Primary School Pupils in Starehe Division of Nairobi Province, Kenya' (Masters of Education Thesis, University of Nairobi 2004)

p 48

⁵⁴ Grace Kwamboka Omete Rasungu, 'Nature and Prevalence of Learning Disabilities Among Standard Three Primary School Pupils in Starehe Division of Nairobi Province, Kenya' (Masters of Education Thesis, University of Nairobi 2004)

p 52

disabilities and found that 43% of the learners who failed in the pupil rating comprehending class discussions, retaining information (Auditory Comprehension), vocabulary, grammar, word recall, storytelling-relating experiences and expression of ideas (Spoken Language). Going by the results from this study, children could be leaving lower primary without basic skills in reading, writing and arithmetic, which would ultimately affect their learning outcomes. This means that the national goals of education may not be achieved as outlined in the various international conventions such as, EFA and the SDGs. This study, although limited geographically, shows that notwithstanding the prevalence of learning disabilities, the schools and teachers were not equipped to identify or handle this category of persons who need special attention.

Nthenge⁵⁵ in her article argues that Kenyan law through the Basic Education Act should provide a framework to enable the realisation of the right to basic education for children with disabilities. This article draws a distinction between inclusive education,⁵⁶ segregated and special education.⁵⁷ It is common practice to have isolated ‘special units’ for children with learning disabilities within the integrated schools with a possibility of transition to mainstream classes depending on the child with a learning disabilities ability to adapt.

⁵⁵ Marriam Nthenge ‘The Basic Education Act of 2013 as a tool for advancing early childhood development and education for children with disabilities in Kenya’ (2017) African Disability Rights Yearbook 3-24 <http://doi.org/10.29053/2413-7138/2017/v5n1a1>

⁵⁶ ‘a set of values, principles and practices that seeks meaningful, effective, and quality education for all students, that does justice to the diversity of learning conditions and requirements not only of children with disabilities, but for all students’ CRC Committee General Comment 9 (2006): The rights of children with disabilities, 27 February 2007, CRC/C/GC/9.

⁵⁷ ‘provision of education in separate environments designed to respond to a particular or various impairments, in isolation from students without disabilities’ CRPD Committee General Comment 4 (2016) art 24: Right to inclusive education, 2 September 2016, CRPD/C/GC/4; see also R Riser *Implementing inclusive education: A commonwealth guide to implementing article 24 of the UN Convention on the Rights of Persons with Disabilities* (2012) 11.

Evidence demonstrates that experiences during the first years of growth enhance or inhibit the realisation of an individual's potential in future life.⁵⁸

Access to Basic Education

National Gender and Equality Commission in their report “Access to Basic Education by Children with Disability in Kenya” finds that a number of counties do not maintain a register/ record of children with disabilities enrolled for the ECDE. The study also revealed that most communities in Kenya are not progressive in promoting education of these children. For instance, “in Isiolo, a child born with disabilities is kept away from the family house and is tethered in the goats’ pen since such a child is an abomination. In Kisii, it is taboo for a woman to give birth to a child with disability and if it happens, the woman is chased away from her matrimonial home.”⁵⁹

They also observe that even though the Basic Education Act provides for an education standards and quality assurance council to ensure that the standards and maintaining quality in institutions of basic education, there is inadequate monitoring of learning in educational institutions for children with disabilities. In conclusion, they recommend that the county government need to hire more ECDE teachers while the national government should establish more boarding schools for children with disabilities especially for pastoralist communities.⁶⁰

⁵⁸ CRC Committee General Comment 7 (2005): Implementing child rights in early childhood, 20 September 2006, CRC/C/GC/7/Rev.1

⁵⁹ National Gender and Equality Commission, Access to Basic Education by Children with Disability in Kenya, (Government of Kenya, 2016)

⁶⁰ National Gender and Equality Commission, Access to Basic Education by Children with Disability in Kenya, (Government of Kenya, 2016)

Guskey and Jung⁶¹ propound the challenges that teachers face with regard to grading of children with learning disabilities. The scholars aver that to become active participants in education programs, families need specific information about their children's learning strengths, areas of struggle, and what can be done at home to promote success.

Policy Inadequacies on Learning Disability

There are various controversies about the field of learning disabilities which hinder the formulation of sound policy and practice on the same. As such this subject has very weak policies in place to address the underlying discrimination that is more than evident on this subject.

In a paper published by National Joint Committee on Learning Disabilities titled '*Learning Disabilities: Implications for Policy Regarding Research and Practice*,'⁶² some of the points of agreement, common misconceptions and unresolved issues are addressed so as to establish a basic consensus upon which to build policy such as the basic definition, the significant difficulties experienced by these learners in areas of educational performance and the coexistence of this disability with other disorders that may manifest social-emotional, behavioural, or attention difficulties.

Mwoma⁶³ offers perceptions of children living with disabilities by reviewing relevant literature and exploring existing gaps and challenges facing SNE in Kenya. She points out that since the post-colonial era, Kenya has made strides to improve service delivery for

⁶¹ Thomas R Guskey and Lee Ann Jung, 'Grading and Reporting in a Standards-Based Environment: Implications for Students with Special Needs' (2009) 48 *Theory into Practice* 53.

⁶² National Joint Committee on Learning Disabilities; *Implications for Policy regarding research and practice*. Retrieved from <www.idonline.org/njcld> accessed on 13 July 2019

⁶³ Teresa Mwoma, 'Education for children with special needs in Kenya: A review of related literature' (2017) *Journal of Education and Practice* ISSN 2222-288X (online) Vol 8, No.28 <www.iiste.org> accessed on 10 April 2019

children with disabilities by formulating various legislation and policy guidelines for training children with disabilities. However, she observes that there exists inadequately skilled and specialized staff for assessment, placement and management of children with disabilities and lack of enough in-service training institutions to capacity build personnel working with these children stating that there exists only one institution in the entire country which is the Kenya Institute of Special Education (KISE). She also identifies inadequate funding as another challenge.

In realising EFA within the free primary education introduced in Kenya in 2002, the Kenya National Commission on Human Rights recommended a review of the free primary education programme to meet the needs of children with disabilities. The National Commission on Human Rights reiterated thus:⁶⁴

“For these children, Free Primary Education (FPE) goes beyond the provision of desks, books and chalk to include boarding, transportation, health and specialised equipment and teaching-aids necessary to educate them effectively.”

This study not only shows the strides taken in realising the right to access to basic education for children with special needs, but also notes that more need to be done to ensure comprehensive realisation of the same.

Conclusion

From the foregoing, the above authors have not clearly identified and provided the loopholes that need to be addressed with respect to access to basic education for children with learning disabilities in Kenya. They have not also given clear terms or suggestions to

⁶⁴ Kenya National Commission on Human Rights, ‘Objects of pity or individuals with rights: The right to education for children with disabilities’ (2007).

enhance the effectiveness of the existing legislations governing access to basic education by children with learning disabilities. Most of them have approached the issue generally while some who have narrowed down on what needs to be done without providing policy guidelines requisite to achieving equality in access to basic education by children with learning disabilities.

This research therefore identifies the paucity of scholarly work and the gaps therein on the efficiency of the guidelines and it seeks to address the question of the efficacy in the application of the laws and guidelines in existence. Majority of the literature on the subject have been done by educationalist with very few papers written with legal minds from a legal perspective – a task that this paper ventures into. This is because real change can only be occasioned by a change in policy and legal framework around this subject as the theory goes that law is a tool for social engineering.

1.9 Research Methodology

This study was a desk based study and was qualitative in nature and entailed the analysing of data from primary and secondary sources relevant to this study. Primary sources of data that were analysed include various legislations, regulations, bills, Government reports, policy documents and relevant international instruments. The study also borrowed a number of lessons from foreign jurisdiction in order to pick valuable lessons from a comparative perspective. Data from secondary sources include those obtained from books, journal articles, newspaper articles, publications and information from internet sources. All information gathered was evaluated for the purpose of this study.

1.10 Chapter Breakdown

Chapter One

This chapter provides the introduction to the study, encompassing the background of the study, statement of the problem, research objectives, research questions, research hypothesis, theoretical framework, and literature review, justification of the study, research methodology, and chapter breakdown.

Chapter Two

This chapter elaborates on the challenges children with learning disabilities face in accessing the right to basic education in Kenya within the existing legal and policy frameworks.

Chapter Three

This chapter interrogates how Kenya's legal, policy and institutional framework address the challenges faced by children with learning disabilities in accessing education. In so doing, it examines the effectiveness of the existing framework in meeting the challenges faced by these children.

Chapter Four

This chapter draws out best practices alternatives on access to education by children with learning disabilities used in South Africa, Canada, and United States with an aim of incorporating these alternatives models in Kenya's legal and policy framework of access to basic education for children with learning disabilities.

Chapter Five

This chapter concludes the study and provides recommendations on ways to improve the legal and policy framework in respect to access to basic education for children with learning disabilities.

CHAPTER TWO

CHALLENGES FACING CHILDREN WITH LEARNING DISABILITIES IN ACCESSING EDUCATION IN KENYA

2.0 Introduction

This chapter examines the challenges that children with learning disabilities face in their quest for basic education in Kenya. In so doing, it relies on the challenges as outlined in the Human Rights Audit Report of the Mental Health System in Kenya,⁶⁵ the report categorizes the challenges that children with learning disability face into: high prevalence and low detection of learning disabilities; deficiencies in the delivery of special-needs education; social factors affecting children with learning disabilities; and structural challenges in educating children with learning disabilities.

Whereas this chapter takes a factual analysis of some of problems that children with learning disabilities face in Kenya, without providing direct legal nexus to the discourse, it is absolutely necessary to highlight some of these challenges for the reader to appreciate the efficacy of the Kenyan laws with respect to the subject of this discourse. Some of the key legal issues that the challenges will enunciate is the lack of implementation on the part of the state on the already enacted legal provisions. Finally, yet crucially, this chapter will inform legal and policy drafters of the reasons behind policy failures with the aim of ensuring that policies are aligned to address the challenges elucidated herein.

⁶⁵ Kenya National Commission on Human Rights, 'Silenced Minds: The Systematic Neglect of the Mental Health System in Kenya' (A Human Rights Audit of the Mental Health System in Kenya, 2011) 17 – 43.

2.1 High Prevalence and Low Detection of Learning Disabilities

There is high number of children with the different variations of learning disabilities. As noted in the introductory chapter, the Kenya Bureau of Statistics in its 2009 census report placed the prevalence of moderate to severe learning disabilities at 3 to 4 per 1000 children.⁶⁶ The total number of children with learning disabilities was placed at 25 to 30 per 1000 children. The Kenya National Human Rights placed the prevalence rate of the various forms of mental and behavioural problems at 10 to 20 percent of all children.⁶⁷ In most instances, children with disabilities are not easily identified as most of them come from poor families with limited educational and medical services.⁶⁸

Nasser argues that the process of identifying and evaluating children with learning disabilities may require an intelligent agent system of classification. Unfortunately, Kenya lacks a clear policy on identification and referral of students with learning disabilities.⁶⁹ The result is that children with learning disabilities get indiscriminately integrated with the other children under the mistaken belief that they will ‘catch-up’ and acquire the necessary skills without special intervention programmes.⁷⁰ These learners also need to be evaluated by professionals and specialists in special education who are not sufficient in their numbers.⁷¹ Schools that have these specialists, sadly charge exorbitantly.⁷²

⁶⁶ Kenya National Bureau of Statistics, Census 2009 Summary of Results; Persons with disability; Available at <https://www.knbs.or.ke/number-of-persons-with-disability/> accessed on 2 December 2018.

⁶⁷ Kenya National Commission on Human Rights (n 64) 18.

⁶⁸ Chomba, J., Mukuria, G., Tumuti, S., and Bunyasi, B., ‘Education for Students with Intellectual Disabilities in Kenya: Challenges and Prospects’ 1.

⁶⁹ Mary E Morningstar, Jennifer A Kurth and Paul E Johnson, ‘Examining National Trends in Educational Placements for Students With Significant Disabilities’ (2017) 38 Remedial and Special Education 3..

⁷⁰ *ibid*

⁷¹ Nasser Khaled, ‘Diagnosing Learning Disabilities in a Social Education by an Intelligent Agent Based System’ (International Journal of Advanced Computer Science and Applications, 2013) 1.

⁷² *Ibid*

A study conducted in Butere District revealed that teachers teaching class three pupils were not able to identify children who although appear ‘normal’, are not able to perform learning activities commensurate to their ability levels and age because of embedded psychological problems.⁷³ The study also revealed that a teacher in a Kenyan public schools handles very large classes, which has on average 60 students in a single session, greatly impedes the ability of such a teacher to identify and evaluate learners who require special needs education.⁷⁴

Consequently, most children with learning disabilities have not been identified for proper placement in schools. Without identification then definitely, appropriate attention cannot be given to help improve their arithmetic, reading and writing skills⁷⁵ and as such these students end up lagging behind academically.⁷⁶ The end results is that of poor performance of these children which can lead to their stigmatization forcing some to resort to dropping out of school.⁷⁷

The Ministry of Education equally lacks a systematic process for assessing children with learning disabilities and to place them in the right programme. Ideally, assessment of learners should be conducted when a learner is unable to meet education goals at their level of study, or when such a learner experiences difficulty in meeting the general demands of

⁷³ Robert Wafula Wekesa and others, ‘Early Identification of Learning Disabilities among Standard Three Pupils of Public Primary Schools in Butere District’, *Journal of Emerging Trends in Educational Research and Policy Studies*, 3.5 (2012), 695–700

<[https://ezproxy.ku.ac.ke:3883/bitstream/handle/123456789/12423/Early Identification of Learning Disabilities among Standard.....pdf?sequence=1&isAllowed=y](https://ezproxy.ku.ac.ke:3883/bitstream/handle/123456789/12423/Early%20Identification%20of%20Learning%20Disabilities%20among%20Standard%20Three%20Pupils%20of%20Public%20Primary%20Schools%20in%20Butere%20District.pdf?sequence=1&isAllowed=y)>.

⁷⁴ Ibid

⁷⁵ Judith Wiener, & Christine Tardif-Williams, ., ‘Social and emotional functioning of children with learning disabilities: does special education placement make a difference?’ (*Learning Disabilities Research & Practice*, 2004) 19(1), pp.20-32.

⁷⁶ Ibid

⁷⁷ Joseph Beltempo& Pier Angelo Achille, ‘The Effect of Special Class Placement on the Self-Concept of Children with Learning Disabilities’ (*Child Study Journal*, 1990) , 20(2), pp.81-103.

the education program.⁷⁸ Although the Ministry of Education has assessment centres in Kenya's 47 counties, most if not all of them are not well equipped or even properly staffed. A number of these assessment centres are notably far from schools thus teachers are often reluctant to refer the learners for the assessment.⁷⁹

2.1.1 Discrimination in Access to Education and Social Factors

Discrimination in access to education for children with learning disabilities continues unabated. This is in spite of the enactment and promulgation of anti-discrimination provisions for the benefit of children with learning disabilities, as contained in: Articles 10 (b), 27, 53 (1) (b) and 4 (1) (b) of the Constitution 2010; The Basic Education Act;⁸⁰ The Children Act;⁸¹ The Persons with Disabilities Act;⁸² and in numerous rules, regulations and policy documents.

Children with learning disabilities are considered low performers and are forced to repeat classes, they are denied enrolment to schools their learning disabilities.⁸³ Further the Ministry of Education has not provided specific guidelines on how schools should handle these issues.⁸⁴ Most schools also lack assistive devices for children with severe learning disabilities.⁸⁵ The learning environment is also not disability friendly. To quote Aseka et al,

⁷⁸ Emily Muga, 'Screening for disability in a community: the 'ten questions' screen for children, in Bondo, Kenya.' (Makerere Medical School, 203) 3(1), 33-39.

⁷⁹ Emily Muga, 'Screening for disability in a community: the 'ten questions' screen for children, in Bondo, Kenya.' (Makerere Medical School, 203) 3(1), 33-39.

⁸⁰ s 4(e), (f), (s), s28 (d) and s34 (2)

⁸¹ s5, S23 (b), s76 (3)(b) and s186 (h)

⁸² s7 (b)(iv) and s44 (b)

⁸³ Willis Acholla Ogadho, Jack Ajowi and Ruth Otienoh, 'Teachers Attitude on Inclusive Education and Learners with Disabilities in Kisumu County , Kenya' (2015) 6 195.

⁸⁴ Brent Elder., 'Right to inclusive education for students with disabilities in Kenya' (Journal of International Special Needs Education, 2015) 18(1), pp.18-28.

⁸⁵ Ann Kangethe , David Simiyu, & Moses Njoroge, ' ' (International Journal of Academic Research in Business and Social Sciences, 2016) 6(6),22-43.

without dealing without providing for reasonable accommodation, equality remains a mirage.⁸⁶

In some communities, children with learning disabilities do not attend school because of the views of their parents and the society.⁸⁷ Children with learning disabilities are associated with curses and their learning disabilities are often perceived as consequences of mistakes made by their parents.⁸⁸ They are considered a nuisance and more often than not separated from other children in the classroom while others are viewed as lazy.

Despite constitutional safeguards protecting persons with disabilities, learners living with disabilities face cross-sectional discrimination ranging from, gender, resource allocation and location.⁸⁹ Children with learning disabilities from rural areas and informal settlements in the urban areas tend to face more discrimination than any other class of school going children. These students eventually drop out of school.⁹⁰

Most of the Kenya rural have stigma associated with children with special needs. These stigmas hinder them from accessing education that is equal to their peers. The stigma, in most cases, arises from a lack of understanding of learning disabilities, some of whom believe that learning disabilities are caused by curses.⁹¹ In regular schools, children with

⁸⁶ William Aseka and Arlene S Kanter, 'The Basic Education Act of 2013: Why it is one step forward and two steps back for children with disabilities in Kenya' (2014) African disabilities Rights Year Book, 2. 35, The Basic Education Act 2013

⁸⁷ Ibid

⁸⁸ Ibid

⁸⁹ Eunice Ndirangu, and Ronnie Midigo, 'Understanding the lived experiences Caregiving for Children Living with Disabilities in Mukuru Slums, Kenya; Implications for Health and Wellness in Caregiving' (International Journal of Health and Biological Sciences, 2019), 2(1), 24-31.

⁹⁰ Richard Zigler et al, 'Situational Analysis and Development of Inclusive Education in Kenya and Tanzania.' (Journal of the International Association of Special Education, 17(1) 2017) p55-65.

⁹¹ Jemaiyo Chabeda-Barthe and others, 'Child Developmental Disabilities, Caregivers' Role in Kenya and Its Implications on Global Migration' (International Journal of Environmental Research and Public Health, 16, 2019), p.1010.

learning disabilities are equally segregated from their peers.⁹² Since special learners do not interact regularly with other students, they tend to have underdeveloped social abilities compared to their peers. Parents who have children with learning disability are mostly poor⁹³ and as such cannot afford the cost of assistive devices which would be instrumental in aiding the development of a child.

Data analysed from 49 countries demonstrated that children with learning disabilities are, on account of social stigma, likely to be out of school than their peers.⁹⁴ This is because they are considered uneducable. In most schools, students with learning disabilities are forced to drop out or to repeat classes with the mistaken belief that their performance will improve. Girls with learning disabilities are most susceptible to becoming victims of child marriages.⁹⁵

2.1.2 Lack of Inclusive Learning Environment

Learners with learning disability require an inclusive learning environment. Inclusive education requires that schools be adapted to accommodate the special needs of children with disabilities. Reasonable accommodation is defined in the CRPD as “necessary and appropriate modification and adjustments not imposing a disproportionate or undue burden, where needed in a particular case, to ensure to persons with disabilities the

⁹² Katherine C Pears and others, ‘Improving Child Self-Regulation and Parenting in Families of Pre-Kindergarten Children with Developmental Disabilities and Behavioural Difficulties. (Prevention Science, 16(2) 2015), pp.222-232.

⁹³ Laraine Glidden, *Ordinary Families, Special Children: A Systems Approach to Childhood Disability*, (Third Edition, by Milton Seligman and Roslyn Benjamin Darling, 2008)

⁹⁴ Lucy Akinyi Eunice, Ezekiel Onyango Nyangia and John Aluko Orodho, ‘Challenges Facing Implementation of Inclusive Education in Public Secondary Schools in Rongo Sub-County, Migori County, Kenya’ (20 IOSR Journal Of Humanities And Social Science 39, 2015) <www.iosrjournals.org>.

⁹⁵ Peter Kimosop, et al, ‘Spatial and Gender Inequality in The Kenya Certificate of Primary Education Examination Results.’ (Applied Geography 62, 2015) pp.44-61.

enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms.”⁹⁶ In the context of education, an example would be developing an independent education plan that lays out the reasonable accommodations needed by a particular student.⁹⁷

The slow uptake of inclusive education has been a challenge for children in poor and marginalized backgrounds.⁹⁸ Proponents of inclusive learning observe that regular schools, as currently constituted, are not equipped to train learners with learning disabilities.⁹⁹ They argue that inadequate budgetary allocation to regular schools means that children with learning disabilities remain disadvantaged as the schools will choose to focus their constrained budgetary allocation to regular students.¹⁰⁰

The existence of special schools is a hindrance to inclusive education and the right of children with learning disabilities.¹⁰¹ Their existence perpetrates the societal notion that children with learning disabilities can only be taught in special education institutions.¹⁰² Therefore, the cost of training children with learning disabilities is higher than that of regular students.¹⁰³ The Government has allocated KES 2,000 per child for leaning

⁹⁶ United Nations Convention on Persons with Disability, Art 2

⁹⁷ United Nations Division for Social Policy and Development, Tool Kit on Disability for Africa

⁹⁸ Peter Oracha Adoyo & Michael Lumumba Odeny, ‘Emergent Inclusive Education Practice in Kenya, Challenges and Suggestions.’ (International Journal of Research in Humanities and Social Studies, Volume 2, 47, 2015)..

⁹⁹ Peter Oracha Adoyo & Michael Lumumba Odeny, ‘Emergent Inclusive Education Practice in Kenya, Challenges and Suggestions.’ (International Journal of Research in Humanities and Social Studies, Volume 2, 47, 2015)

¹⁰⁰ Ibid

¹⁰¹ Mark Carewand others , ‘The Impact of An Inclusive Education Intervention on Teacher Preparedness to Educate Children with Disabilities Within The Lakes Region of Kenya.’ (International Journal of Inclusive Education, 23(3), 2019) pp.229-244.

¹⁰² Ibid

¹⁰³ Ibid

materials and special equipment which is inadequate.¹⁰⁴ As observed while CRPD is centred on inclusive approaches to disability, the Basic Education Act emphasises on the special schools.

Further, Ministry of Education does not have sufficient data on learning disabilities. There are no estimates on how much it would cost to train a child with learning disabilities partly attributed to lack of data and research on the subject.¹⁰⁵ This lack of data has created budgetary imbalances.¹⁰⁶ Available resources sent to schools do not allow for optimal capitation funding for special education. As a consequence, children with learning disabilities do not receive the necessary budgetary allocation to facilitate their access to education. Even with the recently concluded census [2019], the same collected the disability data without taking keen interest in this category of disable children. The supply of resources depends on the demand and educational institutions it depends on the number of learners enrolled. In special schools and units, it depends also on the type of disability, Board of management (BOM) and the parents' teachers' association (PTA)

2.1.3 Inadequate Provision of Development Programmes for Children with Learning Disabilities

There are no policy requirements on the provision of development programmes for children with learning disabilities. Neither is there a policy on the provision of trained personnel to ensure that development programs are effected in schools. This means that these children with learning disabilities have inadequate access to reading, arithmetic and

¹⁰⁴ Ministry of Education; Kenya Education Sector Programme: *Delivering Quality Education and Training to All Kenyans*, (2009) Government Printers.

¹⁰⁵ Ibid.

¹⁰⁶ Ibid.

other developmental programs that are necessary for them to develop the requisite skills needed for successful integration in the work force.¹⁰⁷ There is no policy requirement for the provision of these materials.

Ideally, each school ought to have librarians trained in librarianship and special education to enable students with disability to access library materials in visual and audio form.¹⁰⁸ Learning disabilities manifest themselves in different forms, and having a trained caregivers, librarians or specialists to package and deliver content to special needs students will eliminate the unique challenges faced by students with learning disabilities in accessing skills and knowledge.¹⁰⁹ These specialists are non-existent in schools, especially in the rural areas, and yet their importance cannot be overemphasised.¹¹⁰ Because libraries and information centres provide support and design to curriculum, they are inevitable in packaging the curriculum in ways that allow students with learning disabilities to understand and comprehend.¹¹¹

2.1.4 Lack of Policy on Assistive Technology and Adaptive Equipment

Because there is also no policy framework on the provision of assistive technology and adaptive equipment for children with learning disabilities that are crucial for their education and learning are lacking in learning institutions. Kenya Institute of Curriculum

¹⁰⁷ M. Suzanne Donovan & Christopher Cross, 'Minority Students in Special and Gifted Education.' (National Academies Press 2002), 2101 Constitution Ave., NW, Lockbox 285, Washington, DC 20055.

¹⁰⁸ Ann Turnbull et al, 'Exceptional Lives: Special Education in Today's Schools' (Merrill/Prentice Hall, Order Department, 200 Old Tappan Rd., Old Tappan, NJ 07675, 1995)

¹⁰⁹ IBID

¹¹⁰ Brent Elder & others, 'From Attitudes to Practice: Utilising Inclusive Teaching Strategies in Kenyan Primary Schools.' *International Journal of Inclusive Education*, 20(4) 2016), pp.413-434.

¹¹¹ Brent Elder., 'Right to inclusive education for students with disabilities in Kenya', *Journal of International Special Needs Education*, 2015) 18(1), pp.18-28.

Development noted that children with learning disabilities experience gradual decline in interest in reading over the years.¹¹² Unfortunately, despite this firm finding, the Ministry of Education is yet to provide children with learning disabilities in Kenya with assistive technology and adaptive equipment. Further, note even a policy is underway to address this essential issue.¹¹³ The use of assistive technology and adaptive equipment in classrooms across Kenya will increase the probability of children with learning disabilities to understand information and in increasing their reading and comprehension¹¹⁴ and also reduce the paper baggage that students have to carry every day to school.¹¹⁵

UNESCO's report¹¹⁶ on the accessibility of education across the globe evidences that children with developmental disabilities do not get equal access to education as other students. However, with assistive technology and adaptive equipment, students with mental or developmental disability showed significant improvements in their examination scores. These tools come with the IEP checklist programs that allows students with a developmental disability to learn as efficiently as other students. Writing is also as much a challenge to students as is reading. The assistive technology and adaptive equipment devices come in to give an aiding hand to these students.

¹¹² Grace W Bunyi, 'The Quest for Quality Education: The Case of Curriculum Innovations in Kenya' *European Journal of Training and Development* 678, 2013)..

¹¹³ Tony Bates, and Gary Poole, 'Effective Teaching with Technology in Higher Education: Foundations for Success.' [http://lst-iep.iiep-unesco.org/cgi-bin/wwwi32.exe/\[in=epidoc1.in\]/?t2000=018510/\(100\)](http://lst-iep.iiep-unesco.org/cgi-bin/wwwi32.exe/[in=epidoc1.in]/?t2000=018510/(100)).

¹¹⁴ John Aluko Orodho and others, 'Basic Education in Kenya: Focus on Strategies Applied to Cope with School-Based Challenges Inhibiting Effective Implementation of Curriculum' (2013) 1 *International Journal of Education and Research* 1.

¹¹⁵ Zacharia Kariuki Mbugua and others, 'Factors Contributing To Students' Poor Performance in Mathematics at Kenya Certificate of Secondary Education in Kenya: A Case of Baringo County, Kenya' (2012) 2 *Aijernet.Com* 87 <http://aijernet.com/journals/Vol_2_No_6_June_2012/11.pdf>.

¹¹⁶ Jacqueline Muuya, 'The Aims of Special Education Schools and Units in Kenya: A Survey of Headteachers.' (*European Journal of Special Needs Education*, 17 2002), pp.229-239.

A study has also confirmed that 70 percent of the children with learning disabilities who were given assistive technology and adaptive equipment in the classroom showed a higher level of understanding. The research involved 209 students with learning disabilities from diverse backgrounds and social status. Learning tools were used increase the ability of the students to participate in active learning.¹¹⁷ The study revealed that assistive technology and adaptive equipment aided the access of information, sharing and collaboration, novelty and made learning convenient and productive.¹¹⁸

2.2 Deficiencies in the Mode of Delivery of Special-Needs Education

There are many deficiencies in the delivery of special-needs education, as opposed to regular education. These take various forms:

2.2.1 Inadequate Access to Self-Selected Literature

Students with disabilities ought to be allowed to read literature that they are comfortable with. Having the freedom of choice promotes a child's educational development and bolsters their esteem. Allowing the children to engage their own self-selected literature is an important and the first step in promoting scholarship and piquing the academic interest of children with learning disabilities. It makes them enjoy academic work and expands their experiences.¹¹⁹

¹¹⁷ Susan Bruce and Kavita Venkatesh, 'Special education disproportionality in the United States, Germany, Kenya, and India.' (Disability & Society, 29.10 2014), pp.908-921.

¹¹⁸ Susan Bruce and Kavita Venkatesh, 'Special education disproportionality in the United States, Germany, Kenya, and India.' (Disability & Society, 29.10 2014), pp.908-921.

¹¹⁹Louise A. Ellis, 'Balancing Approaches Revisiting the educational psychology research on teaching students with learning disabilities' (Australian Council for Educational Research, 2005)
<<https://research.acer.edu.au/cgi/viewcontent.cgi?article=1005&context=aer>>

In assisting the children to select reading material, primary and early childhood teachers should encourage a bias on the curriculum needs of the school, the educational significance of a text, integrity, permanence, artistic quality or literary style, and recommendation from professionals. Teachers in rural and poor urban settlements areas equally should be roped in the framing of the curriculum and reading materials for children with learning disabilities because these teachers have the most contact with the disadvantaged children rather than imposing on them policies that they never took part in their formulation.¹²⁰

2.2.2 Fluency in Reading and Comprehension of the Regular Curriculum

There is a challenge among children with disabilities in acquiring fluency in reading and comprehension of curriculum material. Reading development occurs in two distinct stages: fluency and comprehension; and critical consciousness.

Critical consciousness (higher order thinking) refers to the ability to think analytically and abstractly. Developing independent reading skills is an important stage in reading development.¹²¹

For students with learning disabilities and language delays, there is a lack of focus on oral language. Children who have good oral language may have trouble in reading and should be given specialised care in decoding to develop automaticity in reading. Children who have no trouble reading but have difficulty with comprehension should be aided in building comprehension skills.¹²² Background knowledge, mental representation,

¹²⁰ Louise A. Ellis, 'Balancing Approaches Revisiting the educational psychology research on teaching students with learning disabilities' (Australian Council for Educational Research, 2005)
<<https://research.acer.edu.au/cgi/viewcontent.cgi?article=1005&context=aer>>

¹²¹ Ibid

¹²² Sharon Andrews, Inclusion Literature: A Resource Listing Volume 25, Number 3; see also
<<https://research.acer.edu.au/cgi/viewcontent.cgi?article=1005&context=aer>>

comprehension monitoring, integration, making inference and elaborative interrogation are all processes that are essential in developing text comprehension skills. The idea of a developmental sequence should be used to promote literacy, and should be used, with the cooperation of the teachers, to help children with reading disabilities. This is not what is happening in our learning institutions.¹²³

2.2.3 Lack of Special Examination Papers for Children with Learning Disabilities

There are no specialised papers for children with learning disabilities. Under the 8-4-4 curriculum, all learners are subjected to KCPE and the KCSE examinations. These poses monumental challenges for students with learning disabilities as they may not be fully equipped for these papers compared to their counterparts. One wonders why there are special school but no special exams.

Currently, under the 8-4-4 curriculum, KCPE exams are mandatory requirement for all students wishing to transition to secondary schools. KCSE exams are for students who wish to complete secondary school education. These exams are set by teachers who lack training on special education. Moreover, the content tested in the KCPE and KCSE exams is tailored for regular students. In spite of this, students with learning disabilities are expected to post the same results as regular students.¹²⁴

For instance, students with dyscalculia¹²⁵ experience extreme difficulties in calculating and performing arithmetic. Their exams should therefore be different from those of their

¹²³ Sharon Andrews, Inclusion Literature: A Resource Listing Volume 25, Number 3; see also <<https://research.acer.edu.au/cgi/viewcontent.cgi?article=1005&context=aer>>

¹²⁴ Teresa Mwoma, 'Education for children with special needs in Kenya: A review of related literature' (Journal of Education and Practice Vol 8, No.28. 2017) Retrieved from www.iiste.org

¹²⁵ Dyscalculia is difficulty in learning or comprehending arithmetic, such as difficulty in understanding numbers, learning how to manipulate numbers, performing mathematical calculations and learning facts in

regular counterparts. By issuing separate exams, children with learning disabilities will transition easier from primary school to secondary school, and their numbers will increase drastically.¹²⁶

2.3 Structural Challenges in Educating Children with Learning Disabilities

There are structural challenges in educating children with learning disabilities. These occur in two forms, the first relating to an inadequacy of physical necessities for access to education, and the latter relating to the challenges in adopting information and communication technology (ICT) solutions and having them integrated with the learning curriculum.

2.3.1 Physical Barriers to a Free Learning Environment

There are physical barriers to a free learning environment for children with learning disabilities. The first related to the health and physical safety of children with learning disabilities. This affects the children's access to education. Children with learning disabilities should be provided with barrier free and safe physical environment for learning.¹²⁷ The environment in regular schools limits the independence and the mobility of the children with disabilities, and as result, ill health and morbidity are common among children with learning disabilities.

mathematics. It is generally seen as the mathematical equivalent to dyslexia. It occurs to 2-3% of the population.

¹²⁶ Ibid

¹²⁷ Susan Wolf-Fordham and others, 'Emergency preparedness of families of children with developmental disabilities: what public health and safety emergency planners need to know.' (Journal of emergency management (Weston, Mass.), 13(1) 2015), 7.

Some of the children with learning disabilities are unable to correctly estimate distances between two physical objects.¹²⁸ While school environments have barriers and fences meant to limit the movements of the regular learners, these are detrimental to children with learning disabilities who experience injuries as they try to navigate the environment at school.

Most regular school also lack basic sanitary and hygienic facilities, such as clean drinking water, especially in rural areas and informal settlements in urban areas, and which affects the health of children with learning disabilities,¹²⁹ who end up acquiring infections. Safe and clean physical and social learning environments are essential in creating a conducive learning environment for children with disabilities.¹³⁰

2.3.2 Inadequate ICT Adoption

Due to inadequacy in the adoption of ICT in schools in Kenya, the government initially rolled out the laptop project for primary school children.¹³¹ This programme faced many challenges and the Ministry of Education issued a further notice that it would abandon the project in favour of building computer laboratories for each government primary school.¹³²

¹²⁸ Gerd Schulte-Körne, 'Mental Health Problems in a School Setting in Children and Adolescents.' (Deutsches Ärzteblatt International, 113, 2016), p.183-90

¹²⁹ Gerd Schulte-Körne, 'Mental Health Problems in a School Setting in Children and Adolescents.' (Deutsches Ärzteblatt International, 113, 2016), p.183-90

¹³⁰ Susan Wolf-Fordham and others, 'Emergency preparedness of families of children with developmental disabilities: what public health and safety emergency planners need to know.' (Journal of emergency management (Weston, Mass.), 13(1) 2015), 7.

¹³¹ Ministry of Information, Communications and Technology, 'Government Officially Rolls out the Digital Literacy Programme in Schools', 29 September 2016 <http://www.ict.go.ke/government-starts-distribution-of-1-2-digischool-devices-to-over-22-000-public-primary-schools/> accessed 6 June 2019.

¹³² Ouma Wanzala, 'Education ministry abandons Uhuru's laptop project' *Nation Newspaper* 25 February 2019 <https://www.nation.co.ke/news/education/Ministry-abandons-laptop-project/2643604-4997644-10p9jfgz/index.html> accessed 6 June 2019; Editorial, 'Of failed school laptop project and sobering lessons it offers, *Standard Digital* 26 February 2019 <https://www.standardmedia.co.ke/article/2001314435/of-failed-school-laptop-project-and-sobering-lessons-it-offers> accessed 6 June 2019.

Nevertheless, even if the project were to be successfully implemented, the rollout and the curriculum is designed for regular students. The schools, too, are designed for regular students. Children with learning disabilities are not likely to reap the benefits of ICT because the available material has not been adapted for children with learning disabilities, and is meant for regular students.¹³³ The government has also not trained tutors on how to adapt the available ICT material for the benefit of children with learning disabilities.¹³⁴

A study conducted in 2018 revealed that 13% of the head teachers in special schools and 77% of the head teachers in primary schools lack special needs education.¹³⁵ Primary and secondary schools have not been supported to adopt learning by modern technology such as mobile tablets in classrooms to increase their level of concentration.¹³⁶ For instance, students cannot create interactive materials with the assistance of the eBooks author,¹³⁷ students cannot use the mobile tablets to sketch and draw items.¹³⁸ Not only these, but there are other varieties of applications that students with learning disabilities can use to share their doodles or drawings.¹³⁹

In creating learning curriculum that can be implemented with learning ICT solutions, parents for learners with learning disabilities need to be consulted. Ordinarily, these learners are themselves never interviewed or consulted on matters that affect their welfare or

¹³³Ting Fang Wu and others, 'Factors Related to ICT Competencies for Students with Learning Disabilities', *Journal of Educational Technology and Society*, 21.4 (2018), 76–88.

¹³⁴ Ibid

¹³⁵ Ibid

¹³⁶ Ibid

¹³⁷ Ibid

¹³⁸ Ibid

¹³⁹ John Aluko Orodho and others, 'Basic Education in Kenya: Focus on Strategies Applied to Cope with School-Based Challenges Inhibiting Effective Implementation of Curriculum', (*International Journal of Education and Research*, 1.11 (2013), 1–20.

wellbeing.¹⁴⁰ This gap in engagement reinforces societal misconceptions that children with learning disabilities are uneducable.¹⁴¹ When properly implemented, the ideal learning curriculum should not lack visual aids and should be adapted curriculum, in whatever manner, to train students with learning disabilities.¹⁴²

2.4 Conclusion

This chapter has broad categories that analysed the challenges that children with learning disabilities face in accessing basic education in Kenya. The challenges can primarily be addressed by the Government and parastatals in the education sector since it owes a duty to all children to realise free, compulsory basic education. The illumination of the challenges faced by these children should bring focus to their needs and provide talking points on ways forward to ensure no discrimination occurs in the journey towards free primary education in Kenya.

The next chapter will consider the various legal and policy framework provisions on access to education for children with disabilities.

¹⁴⁰ Clever Taderera and Herna Hall, ‘Challenges Faced by Parents of Children with Learning Disabilities in Opuwo, Namibia’, (African Journal of Disability, 6 2017), 1–10 <<https://doi.org/10.4102/ajod.v6i0.283>>.

¹⁴¹ M.J. Chomba, G. Mukuria P.W.; Kariuki; S.Tumuti, B.A. Bunyasi, “Education for Students with intellectual Disabilities in Kenya: Challenged and Prospects”

<http://erepository.uonbi.ac.ke/bitstream/handle/11295/84802/Chomba_Education%20for%20Students%20with%20Intellectual%20Disabilities%20in%20Kenya.pdf?sequence=2&isAllowed=y>

¹⁴² Ibid

CHAPTER THREE

KENYA'S LEGAL, POLICY AND INSTITUTIONAL FRAMEWORK FOR CHILDREN WITH SPECIAL NEEDS

3.0 Introduction

The Kenyan Constitution¹⁴³ provides that every child has a right to free and compulsory basic education.¹⁴⁴ This provision read with the Children Act¹⁴⁵ clearly articulates that every child is entitled to free basic education that shall be compulsory are the first clear Kenyan legal provisions on free and compulsory basic education. The latter borrowing a leaf from Article 28 of the United Nations Convention on the Rights of the Child that urged governments to ensure free and compulsory free education.¹⁴⁶ These rights to free and compulsory basic education is not only accorded to regular school going children but also covers children with learning disabilities. Article 54 1(b) of the 2010 Kenyan constitution in its provisions for persons with disabilities clearly stipulates that persons with disabilities shall be entitled to access integrative educational institutions and facilities for persons with disabilities or special needs, with a focus on compatibility of such services and their alignments with interests of the person.¹⁴⁷

3.1 Historical Background on Education in Kenya

Before the promulgation of the 2010 constitution, there were no clear laws providing for the interests of learners and trainees with special needs. From Independence, the

¹⁴³ 2010

¹⁴⁴ The Constitution of Kenya 2010, Art 53 (1) (b)

¹⁴⁵ The Childrens Act 2001, s 7(2)

¹⁴⁶ United Nations Convention on the Rights of the Child (1990)

¹⁴⁷ The Constitution of Kenya 2010, Art 54 1(b)

government adopted a culture of addressing interests facing the education sector through commissions, committees and task forces.¹⁴⁸ Special Needs Education has also been provided through government circulars and general education policy and statement.¹⁴⁹ Many of which were not translated into a comprehensive policies,¹⁵⁰ did not have clear provisions for people with learning disabilities but also had no backing of the law as most of its recommendations were hardly adopted. However, we cannot ignore the role the early commissions, committees and the task forces played in getting us the current legal frameworks that we have.

The first Committee on people with special needs was the Committee on Care and Rehabilitation of the Disabled chaired by Ngala Mwendwa (1964),¹⁵¹ set up in the same year with the Commission on education that generated the famous Report of the Kenya Education Commission (The Ominde Report) of 1964. This commission was tasked with reforming the Kenyan education system inherited from the colonial government to tailor it to serve the interests of the Kenya and its people.¹⁵² The Ominde Report was adopted by the Sessional Paper No 10 of 1965 on African Socialism as the basis of post-Independence education in Kenya.¹⁵³ This was followed by the enactment of the Education Act (1968) being that was later replaced by the new Education Act of 2013 which is more

¹⁴⁸ Ministry of Education Science and Technology, Sessional Paper No 1 of (2005), A Policy framework for Education Training and Research

¹⁴⁹ Republic of Kenya, The National Special Needs Education Policy Framework in Kenya (2009)

¹⁵⁰ Ibid

¹⁵¹ Committee on Care and Rehabilitation of Disabled Persons by Ngala Mwendwa (1964)

¹⁵² The Kenya Education Commission (Ominde Report, 1964)

¹⁵³ Republic of Kenya, Sessional Paper No 10 (1965) on African Socialism

comprehensive compared to the 1968 Education Act ¹⁵⁴ addressing the emerging trends in education and training such as special needs education. ¹⁵⁵

Other key commissions, committees and task force post-independence includes; The Report of the National Committee on Educational Objectives and Policies of (The Gachathi Report) which led to the establishment of the National Centre for Early Childhood Education (NACECE)¹⁵⁶ and the Institute of Special Education (KISE) mandated with building capacity in Special Need Education (SNE).¹⁵⁷ There was also the Report of the Presidential Working Party on Education and Manpower Training for the Next Decade and Beyond (The Kamunge Report, 1988) which recommended on improving education financing, quality and relevance,¹⁵⁸ The Commission of Inquiry into the Education System of Kenya (Koech Report) which for the first time recommended a Totally Integrated Quality Education and Training (TIQET) also recommended the establishment of a National Special Education Advisory board.¹⁵⁹ The Koech Report (1999) also noted that there was no comprehensive SNE policy or legal framework on SNE¹⁶⁰. However, most of their recommendations were not fully considered with the government citing high costs of implementation.¹⁶¹

¹⁵⁴ The Basic Education Act 2013

¹⁵⁵ Ministry of Education Science and Technology, Sessional Paper No 1 of (2005), A Policy framework for Education Training and Research

¹⁵⁶ The National Committee on Educational Objectives and Policies (The Gachathi Report, 1976)

¹⁵⁷ The National Committee on Educational Objectives and Policies (The Gachathi Report, 1976)

¹⁵⁸ The Kamunge Report (1988)

¹⁵⁹ The Commission of Inquiry into the Education Systems of Kenya (The Koech Report, 1999)

¹⁶⁰ The National Special Needs Education Policy Framework in Kenya (2009)p 20

¹⁶¹ The National Special Needs Education Policy Framework in Kenya (2009)

The Dr. Kochung Taskforce (2003) was one of the most important taskforce for special education as it established with the objective of appraising the status of special education in Kenya.¹⁶² Some of its recommendations of this Taskforce that influenced the future legislation and policies for learners and trainees with special abilities included emphasis and strengthening teachers training, The Educational Assessment and Resource Centers (EARCs) and establishing a Special Needs National Survey.¹⁶³

In this chapter we therefore consider the legal framework of children with learning disabilities. The first part considers the policy framework on the subject. The Second part considers the Constitutional and statutory provisions in this respect and finally, the paper considers the regional and international instruments to which Kenya is a party to.

3.2 Policy Framework

3.2.1 A Policy Framework for Education, Training and Research¹⁶⁴

This sessional paper is said to be one of the first elaborate and progressive policy on education and training. Some of the key objectives included the realization of Universal access to basic education and training; ensuring equitable access to education; and training for all children including disadvantaged and vulnerable groups.¹⁶⁵

The paper also provided some specific statistics on the population of people with special needs in Kenya. It was its finding that special needs persons were covered about 10 percent of the Kenyan population with 25 percent of this group being the school going children.¹⁶⁶

¹⁶² The Task Force on Special Needs Education (Kochung Report, 2003)

¹⁶³ Republic of Kenya, The National Special Needs Education Policy Framework in Kenya (2009)

¹⁶⁴ Sessional Paper No. 1 of 2005

¹⁶⁵ Policy Framework for Education, Training and Research, Sessional Paper No. 1 of 2005

¹⁶⁶ Policy Framework for Education, Training and Research, Sessional Paper No. 1 of 2005 Para 1.16

It also reported that out 750,000 children with special needs only about 26,885 of the group were attending school meaning that about 10 percent of these children with special needs stay at home.¹⁶⁷

However, the accuracy of these figures can be disputed given that the source and accuracy of the data is not fully disclosed. Again the report does not fully define a person with special needs unlike other policies such as National Special Needs Education Policy Framework in Kenya of 2009 thus questioning the criteria used in identifying these “special needs persons.”

The rationale of this paper was to achieve Education for all and as such, every Kenyan the right to education and training no matter his or her socio economic status.¹⁶⁸ It also emphasises on Special Education as important for human capital development as it builds self-reliance among these class of persons.¹⁶⁹ Despite recognizing the importance of Special Education and Special Schools, the Sessional Paper is clear in reiterating that special schools and units focus on catering for children with special needs especially hearing, visual, mental and physically challenged but some like children with learning disabilities, psychosocially different, autistic, gifted and talented were clearly being left out with no tailor made education services for them.¹⁷⁰

The paper also blamed lack of clear guidelines and support to the implementation of an all-inclusive education policy as the main challenge facing the provision of education to

¹⁶⁷ Policy Framework for Education, Training and Research, Sessional Paper No. 1 of 2005

¹⁶⁸ Policy Framework for Education, Training and Research, Sessional Paper No. 1 of 2005

¹⁶⁹ Policy Framework for Education, Training and Research, Sessional Paper No. 1 of 2005

¹⁷⁰ Ibid

children with special needs.¹⁷¹ Other challenges include lack of data on children with special needs and inadequate tools and skills in identification and assessment,¹⁷² inadequate capacity among many teachers to handle children with special needs, lack of coordination among service providers and inappropriate placements of children with disabilities as some of the key challenges facing the implementation of the Special Needs Education.¹⁷³

The Sessional Paper (2005) went on to recommend for the integration of special education programmers in all learning and training institutions ensuring that they are responsive to the education needs of learners with special needs.¹⁷⁴ It also recommended that there be developed a national policy that comprehensively defines areas of special need.¹⁷⁵ These recommendations influenced the National Special Needs Education Policy Framework in Kenya of 2009 that focused on inclusivity and integration of learners and trainees with special needs and the same is reflected under the 2010 constitution in Article 54, the Education Act (2013) among other legislations.

3.2.2 National Special Needs Education Policy Framework in Kenya (2009) (“NSNE”)

The 2009 policy for the first time recognized new categories of Special Need Education (“SNE”) learners including children with learning disabilities. This was the first time when learning disabilities was properly recognized as a special need in a policy document.¹⁷⁶ However, a lot of criticism has been directed at the accommodative of the policy in

¹⁷¹ Ibid

¹⁷² Ibid

¹⁷³ Ibid

¹⁷⁴ Ibid

¹⁷⁵ The National Special Needs Education Policy Framework in Kenya 2009

¹⁷⁶ The National Special Needs Education Policy Framework in Kenya 2009

including orphans, refugees and internally displaced persons as people with special needs with the later provisions being vacated by the 2018 policy review on National Special Education.¹⁷⁷ The NSNE policy also recognized that the implementation of Free Primary Education led to an influx and inclusion of new categories of special needs i.e. Down syndrome, loco-motor impairment, maladjusted and gifted and talented learners.¹⁷⁸

The NSNE policy was largely established to harmonize educational service for learners with special needs and disabilities in Kenya.¹⁷⁹ They intended to harmonize all the educational policies and services established since independence into one consistent and unified government policy with regard to special needs education.¹⁸⁰ This was informed by the fact that there was lack of comprehensive policy on SNE.¹⁸¹

Unlike the 2005 Policy Paper No 1, the NSNE Policy Framework recognized that there was inadequate data on children and people with special educational needs and disabilities.¹⁸² It also recognized that poor planning and coordination had led to a scenario where there has been duplication of provision of services to learners with disabilities with some provision being substandard and unregulated.¹⁸³

The main purpose of the NSNE Policy Framework (2009) was to create a favourable environment for learners with special needs and disability in order to ensure that they had equal access to quality and relevant education and training.¹⁸⁴ The policies was set to apply

¹⁷⁷ Ibid

¹⁷⁸ Ibid

¹⁷⁹ Ibid

¹⁸⁰ Ibid

¹⁸¹ Ibid

¹⁸² Ibid

¹⁸³ Ibid

¹⁸⁴ Ibid

to all educational, training, and research activities, educational interventions programs of special needs and disabilities in Kenya.¹⁸⁵ In terms of coverage the policy covered ECDE, Primary, Secondary, Adult and continuing Education (ACE), Non formal Education, TVET, Teacher Education and training including all tertiary institutions like universities.¹⁸⁶ The biggest challenge of this policy is that it does not tally with the legislative framework.

One of the main objectives of the Policy was to enhance early identification, assessment, intervention, placement, habitation and rehabilitation of learners with special needs.¹⁸⁷ This underscores the recommendations from the Sessional Paper No. 1 of 2005 and the Kochung Report of 2003.¹⁸⁸ Other key overall objectives included creating structures for inclusion to formal and informal education training, creating a barrier free environment, capacity building and research and development.

One of the challenges of NSNE is that most policies do not have specific objectives but rather offers a plethora of the same meaning that their implementation becomes close to impossible. The NSNE Framework stipulated 15 areas of intervention covered by the policy including; Assessment on Intervention that built on the work of the Educational Assessment and Resource Centres (EARCs).¹⁸⁹ Other areas of intervention included; access to quality and relevant education, adaptation of facilities, inclusive education,

¹⁸⁵ Ibid

¹⁸⁶ Policy Framework for Education, Training and Research, Sessional Paper No. 1 of 2005

¹⁸⁷ Ibid

¹⁸⁸ Kochung Report 2003

¹⁸⁹ The National Special Needs Education Policy Framework in Kenya 2009

curriculum development among other with each of them having their unique policy statement and strategies.¹⁹⁰

Although the Policy unlike past policies required that it be reviewed every five years to ensure its relevance.¹⁹¹ It is for this provision that it was possible to draft the Sector Policy for Learners and Trainees with Disabilities in May, 2018.¹⁹²

3.2.3 Sector Policy for Learners and Trainees with Disabilities (2018)

The Sector Policy for Learners and Trainers with Disabilities (2018) (“SPLTD”) substantially improved the provisions of the NSNE Policy with a more robust and updated policy provisions in line with the Constitution (2010) and the Basic Education Act of 2013. Unlike the previous policies, the SPLTD did set the required minimums when it comes to education of people with special needs.

It is also noticeable that terms are defined at the very onset. Of interest to mention is “Inclusive Education.” There is also emphasis for learners and trainees with disability to be provided with appropriate educational support within the regular institutions of learning.¹⁹³

It also puts a lot of emphasis on inclusion and integration as reflected under art 54 1(b) of the Kenyan Constitution.¹⁹⁴ This policy equally advocates for inclusive education as opposed to segregated education.¹⁹⁵

The National Education Sector Plan (NESP) (2013-2020) reiterated the importance of reviewing the Special Needs Education Policy (2009) to align SNE policy with the Kenya

¹⁹⁰ Ibid

¹⁹¹ Ibid, para 3.6

¹⁹² Ministry of Education, Sector Policy for Learners and Trainees with Disabilities 2018

¹⁹³ Ibid

¹⁹⁴ The Constitution 2010, Art 54 (1)(b)

¹⁹⁵ Ministry of Education, Sector Policy for Learners and Trainees with Disabilities 2018

Vision 2030 development blueprint, the constitution of Kenya (2010) and the Sustainable Development Goals especially on goal 4 that provides for education for all.¹⁹⁶ The NESP recommendation together with the SNE Policy Review Data Collection Report of 2016, were key in developing the SPLTD. The SNE Policy Review Data Collection Report highlighted that the 2009 Special Needs Education Policy Framework was not effectively implemented because of poor dissemination and a lack of an implementation and coordination framework.¹⁹⁷

The SPLTD gives cognizable emphasis on the person's first language principle in addressing persons with disabilities,¹⁹⁸ it emphasizes on the person rather than their disability thus the use of terms like 'impaired' 'handicapped' and 'challenged' are replaced with 'learners and trainees with disabilities.'¹⁹⁹ This change of terminology is vital in ensuring that learners and trainees with disabilities receive equal treatment and are accorded equal respect and opportunity.

The SPLTD also properly limited the scopes of who is a learner and trainee with special needs by eliminating orphans, internally displaced persons, gifted and talented as part of learners and trainees with disabilities.²⁰⁰ This is a step in the direction as it distinguishes those who are socially vulnerable from those who have special learning needs and disabilities and as such allows them to be accorded the required support and guidance without confusion. Some of the learners and trainees with special needs retained under the new scope include but is not limited to those with intellectual and development abilities,

¹⁹⁶ The National Education Sector Plan (NESP) (2013-2020)

¹⁹⁷ Ibid

¹⁹⁸ Ibid

¹⁹⁹ Ibid

²⁰⁰ Ibid

those with speech and language difficulties and those with specific learning disabilities like dyslexia, dyscalculia and dysgraphia.²⁰¹

The Sector Review Policy also streamlined the objectives from eleven in the NSNE to just four main objectives being: aligning education services of learners and trainees with disabilities with relevant national policy frameworks, Developing a clear framework for inclusive education and training and addressing existing policy and implementation gaps supported by development of guidelines for the policy implementation.²⁰² The policy goes on to identify sixteen thematic areas structuring them in a way that inclusive education and training cuts across all themes.²⁰³ In the same spirit its first thematic area is Inclusive education where the policy set is to mainstream and provide inclusive education and training at all levels of learning.²⁰⁴ Other thematic areas for policy formulation touch on; Access to quality education, Assessment and early intervention, Quality learning environment, health and safety, Specialized learning resources, assistive devices and technology etc.²⁰⁵

Emphasis is also put on home based education providing for education of children with disabilities from the onset in their homes even before they join formal institutions of learning.²⁰⁶ This is a good provision but it is very hard to implement without a clear legal provision and support from respective stakeholders because of its cost constraints and related challenges.

²⁰¹ The National Education Sector Plan (NESP) (2013-2020)

²⁰² Ibid, Policy review Process para 1.2

²⁰³ Ibid para 1.3

²⁰⁴ Ibid, thematic area 1, Sector Policy for Learners and Trainers with Disabilities (May, 2018)

²⁰⁵ Ibid, thematic areas

²⁰⁶ Ibid, thematic area 6

Lack of guidelines to back the implementation of inclusive education and unreliable data on learners and trainees with disabilities in and out of school also poses a major challenge in pursuing access to quality education.²⁰⁷

Implementation on the SPLTD was categorized into three key results; management and coordination, quality and assurance and monitoring and evaluation.²⁰⁸ An implementation guideline was also developed in order to oversee the implementation of the policies. The 2009 SNE policy framework did not have an implementation guideline or a body set to oversee the implementation of its policies. Under the SPLTD, a directorate is established for learners and trainees with disabilities with the mandate of coordinating the provision of education services for learners and trainees with disabilities across the sector.²⁰⁹ In as much as this provision is good, it overlaps with the roles and mandate of the National Disability Boards formed under the Disability Act and the role of the Cabinet Secretary in regulating Special Needs Education as provided under the sections 45 (1) and 2 of the Basic Education Act of 2013.²¹⁰

There is still need to develop a coordinated legal framework that will bring together all the stake holders providing services to learners and trainees with disabilities.²¹¹ Although the purpose of the Sector Policy (2018) certain gaps and overlapping roles are imminent. Policies, roles and bodies set under law to monitor, regulate and coordinate education for learners and trainees with special abilities will always have a better locus standi in

²⁰⁷ Ibid

²⁰⁸ Ibid

²⁰⁹ Ibid, establishment of the Directorate paras 5.2-5.3

²¹⁰ The Basic Education Act 2013

²¹¹ The National Education Sector Plan (NESP) (2013-2020)

addressing issues of learners with disabilities than the bodies provided for under the policy document unless its provisions are translated into law.

3.2.4 Kenya Implementation Guidelines Sector Policy for Learners and Trainers with Disabilities (2018) (“the SPLTD Guidelines”)

The SPLTD Guidelines were meant to provide guidance and practical illustrations of how relevant government ministries and stake holders can implement policy statements and strategies.²¹² The implementation guidelines, identifies and lists Ministries, Departments and Agencies (MDAs) responsible for implementation of the specific activities and driving the process.²¹³ One of the main setbacks here is that since the implementation framework is not based in law MDAs identified will rely more on their responsibilities with regard to learners and trainees with disabilities as provided for under the Constitution and other statutes before giving their consideration to the roles as assigned under the Implementation Framework.

However, the guidelines are outlined, structured and worded more like strategies, left open ended without clear timeline of activities. It also establishes six coordination committees as the body tasked with the implementation headed by The National Steering Committee.²¹⁴ This only creates multiplicity of roles and overlapping responsibilities because they are catered for under various respective legislations. The coordination structures are also not established under law as such its recommendations would not have a strong standing ad that of a committee, a board or a body established under the law to oversee the same responsibilities. These committees leave a big gap as it may lead to

²¹² Ibid

²¹³ Ibid

²¹⁴ Ibid, establishing of Sector Policy implementation committee

issuing of directives, memorandum and undertakings that may be ignored or simply dismissed for not being supported by any clear legislative provision. Having these committees' protected by legislation might be a move to consider going forward but considering multiplicity and overlapping of roles it will pose an unimaginable challenge than one can imagine.

3.3 Legal Framework

3.3.1 International and Regional Framework

The right to education of children with learning is safeguarded in a number of regional and international human rights instruments. Whereas there is no express single instrument that has addressed this subject, a number of these instruments discussed herein by extrapolation protect the right to education of children with learning disabilities. Some of the instruments that have been ratified by Kenya forms part of Kenyan law by dint of Article 2(5) & (6) of the constitution. We consider the following international and regional instruments.

3.3.2 International Instruments

At international level, the Universal Declaration of Human Rights (“Universal Declaration”) Article 26 provides that everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Further, it is provided education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. Article 7 also prohibits discrimination.

International Covenant on Economic, Social and Cultural Rights (“ICESCR”) also under Article 13 emphasises that the States Parties to the present Covenant recognize the right of everyone to education. They agree that education shall be directed to the full development of the human personality and the sense of its dignity and shall strengthen the respect for human rights and fundamental freedoms. UN Convention on the Rights of the Child (“CRC”) Article 28 provides that children have the right to an education. Further that discipline in schools should respect children’s human dignity.

The Convention on Rights of People Living with disability (“CRPD”) Article 24 provides that the state Parties should recognize the right of persons with disabilities to education. With a view to realizing this right without discrimination and on the basis of equal opportunity, States Parties shall ensure an inclusive education system at all levels and lifelong learning directed to the full development of human potential and sense of dignity and self-worth, and the strengthening of respect for human rights, fundamental freedoms and human diversity. Further the education should development by persons with disabilities of their personality, talents and creativity, as well as their mental and physical abilities, to their fullest potential while also enabling persons with disabilities to participate effectively in a free society.

Crucially, Article 24(2) emphasises on the States Parties ensuring that Persons with disabilities are not excluded from the general education system on the basis of disability, and that children with disabilities are not excluded from free and compulsory primary education, or from secondary education, on the basis of disability. It is also the duty of the state to ensure that Persons with disabilities can access an inclusive, quality and free

primary education and secondary education on an equal basis with others in the communities in which they live.

A running theme in all these instruments is the right to free and compulsory primary education. Unfortunately, the recommendations to state parties by the CRPD Committee lack explicit guidance regarding early intervention under Article 24. Instead, the Committee adopts a more general approach of recommending inclusive education at all levels. In cases where recommendations are targeting specific levels, the CRPD Committee explicitly makes reference to primary, secondary and tertiary education.²¹⁵ Specific recommendations are only notable in the Concluding Observations of state parties such as Austria, where the CRPD Committee urges the state parties to ensure inclusive education from kindergarten to secondary education.²¹⁶ Nonetheless, recent developments by the CRPD Committee reflect a positive shift. In its General Comment 4 on article 24,²¹⁷ the Committee underscores early detection, identification and access to services for preschool children, together with the provision of support and training to parents and caregivers of young children with disabilities.²¹⁷ The CRPD Committee, thus, encourages state parties to invest in inclusive pre-school education in light of the clear evidence of the benefits to children as well as the enhanced likelihood that attendance at pre-school results in greater acceptance into local community schools.²¹⁸

²¹⁵ CRPD Committee Concluding Observations, Mexico CRPD/C/MEX/CO/1; CRPD Committee Concluding Observations, China CRPD/CHN/CO/1.

²¹⁶ *Ibid.*, para 40.

²¹⁷ CRPD Committee Concluding Observations, Austria, CRPD/C/AUT/CO/1 67

²¹⁸ CRPD Committee Concluding Observations, Austria, CRPD/C/AUT/CO/1

The Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW)²¹⁹ also reminds state parties to ensure equality of access by men and women to all levels of education, including pre-primary. Article 10(a) provides: States shall take measures to ensure the same conditions for career and vocational guidance, for access to studies and for the achievement of diplomas in educational establishments of all categories in rural as well as in urban areas; this equality shall be ensured in pre-school, general, technical, professional and higher technical education, as well as in all types of vocational training. Early intervention is recognised in other declarations, including the Salamanca Statement on Access to Special Education (1994),²²⁰ which called on states to invest greater effort in early identification and intervention strategies.²²¹

The only challenge that remains constant with international law and international frameworks in this context is that they lack implementation apparatus. This means that if the government adopts it then it has to translate it into local legislations tailored to the local context to make the international provisions have tangible effect in the lives of persons with learning disabilities. It relies on government good will which if absent will prove fatal to learners and trainees with special educational needs that have always relied on the international framework to set the standard on the rights of persons with disabilities.

²¹⁹ CEDAW Art 10(a)

²²⁰ United Nations Educational, Scientific and Cultural Organisation ‘The Salamanca statement on framework for action on special needs education’ (adopted by the World Conference on Special Needs Education: Access and quality, Salamanca, Spain, 7-10 June 1994).

²²¹ United Nations Educational, Scientific and Cultural Organisation ‘The Salamanca statement on framework for action on special needs education’ (adopted by the World Conference on Special Needs Education: Access and quality, Salamanca, Spain, 7-10 June 1994). Sec 3(6)

3.3.3 Regional Instruments

Regionally, the African Charter on Human and Peoples' Rights (African Charter), the African Charter on the Rights and Welfare of the Child (African Children's Charter), the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (African Women's Protocol) and the African Youth Charter safeguard the rights to education of persons with disabilities.

African Charter on Human and Peoples' Rights ("African Charter") Article 13 of the Children's Charter obliges state parties to take special measures to ensure that gifted, female and disadvantaged children have equal access to education. This is further elaborated on in the guidelines on implementation of economic, social and cultural rights in the African Charter which calls for inclusive free and compulsory education for children with disabilities. More recently, the African Commission on Human and Peoples' Rights (African Commission) published the Draft Protocol to the African Charter on Human and Peoples' Rights on the Rights of Persons with Disabilities in Africa (Draft Disability Protocol). Article 12 of the Draft Disability Protocol explicitly refers to the rights to education of persons with disabilities, emphasising that persons with disabilities should not be considered uneducable or untrainable. Article 17 of the African Charter provides that every individual shall have the right to education.

Continental Plan of Action for the African Decade of Persons with Disabilities 2010–2019, the main objective of the Plan is to ensure that there is the full enjoyment by children with disabilities of all human rights and fundamental freedoms on an equal basis with other children.

Member states are also advised to adopt full, inclusive, and accessible education policies, programmes and school systems to promote the education of children with disabilities including early childhood development and education.²²²

The Dakar Framework for Action 2000 also recognises the need to expand and improve comprehensive ECDE, especially for the most vulnerable and disadvantaged children.²²³

Globally, ECDE is becoming an integral strand of discussions on the right to education. In the current 2030 Agenda for sustainable development,²²⁴ state parties commit to provide inclusive and equitable quality education at all levels, including early childhood education.²²⁵ Hence, while ECDE does not enjoy adequate protection in binding international norms, the correlation between early intervention, inclusive education and being included in the community²²⁶ remains unequivocal. The obligation to fulfil this right, therefore, remains inexcusable for state parties. It is essential to note that Kenya is party to the aforementioned instruments²²⁷ and has endorsed international declarations on education, as discussed in this section.

The African Commission guidelines to state parties on the implementation of economic, social and cultural rights clearly interpret the right to education to include access to pre-primary education.²²⁸ However, the guidelines in subsequent paragraphs fail to elaborate

²²² P 11

²²³ Dakar Framework for Action: Education for All: Meeting our Collective Commitment (adopted by the World Education Forum, Dakar, Senegal, 26-28 April 2000).

²²⁴ UN General Assembly 70/1 Transforming our world: The 2030 Agenda for Sustainable Development, Resolution adopted by the General Assembly on 25 September 2015, A/RES/70/1 <<https://sustainabledevelopment.un.org/index.php?>> accessed 9 November 2019

²²⁵ Ibid

²²⁶ CRPD Arts 19, 24 & 26

²²⁷ See list of treaties ratified by Kenya

http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Countries.aspx?CountryCode=KEN&Lang=EN (accessed 18 November 2019).

²²⁸ Ibid 217, para 71

on pre-school. Contrary to the aforementioned instruments, the Standard Rules on Equalisation of Opportunities for Persons with Disabilities (Standard Rules)²²⁹ explicitly make reference to pre-primary education. Rule 6 reminds states to give special attention to very young children with disabilities and pre-school children with disabilities.²³⁰ While they remain non-binding, the Standard Rules have arguably become a norm of *jus cogens*.²³¹

Therefore, Rule 6 read together with article 24 of the CRPD remains key in the promotion of access to early childhood education by learners with disabilities. One can also argue that article 26 of the CRPD on habitation and rehabilitation to some extent addresses early intervention in school for children with disabilities. It obligates state parties to the CRPD:²³² to take appropriate measures to enable persons with disabilities to attain and maintain maximum independence and full inclusion and participation in all aspects of life, specifically in the areas of education and social services, in such a way that these services and programmes begin at the earliest possible stage and are based on the multidisciplinary assessment of individual needs and strengths

3.3.4 National Legal Framework

3.3.4.1 The Constitution of Kenya (2010)

Article 54(1) (b) of the Constitution obligates the government to ensure children with learning disabilities, among other forms of disabilities, to ‘access education institutions and facilities for persons with disabilities that are integrated into the society to the extent

²²⁹ UN General Assembly ‘Standard Rules on the Equalisation of Opportunities for Persons with Disabilities’ 85th Plenary Meeting 20 December 1993, A/RES/48/96.

²³⁰ Ibid, para 5(a) and (b)

²³¹ CRPD Preamble

²³² CRPD Art 26(1)

compatible with the interests of the person'. Article 54(1) (e) further mandates the government to provide 'materials and devices' to help persons with disabilities overcome constraints that are imposed upon them by virtue of their disability. In as much as some positive measures are in place, there is still a lot to be done in legal and policy formulation and enforcement to realize progressively these rights of children with learning disabilities. Statutes that have been enacted to help children, including those with learning disabilities, access education include: the Basic Education Act²³³ ; Children Act²³⁴ ; Persons with Disabilities Act²³⁵ ; Mental Health Act²³⁶ ; Social Assistance Act²³⁷ ; Kenya National Commission for UNESCO Act²³⁸; Kenya Institute of Curriculum Development Act²³⁹; Health Act²⁴⁰; and their accompanying rules and regulations.

However, this analysis demonstrates that there have been minimal legal and policy support towards the goal of equal education parity for children with disabilities, and that the above-listed instruments are either lacking in law or failing on implementation. Scenarios are analysed here to demonstrate either lack in sufficiency of the law and policy, or to reflect gaps in implementation include:

²³³ Act No 14 of 2013

²³⁴ Act No 8 of 2001

²³⁵ Act No 14 of 2003

²³⁶ CAP 248

²³⁷ Act No 24 of 2013

²³⁸ Act No 5 of 2013

²³⁹ Act No 4 of 2013

²⁴⁰ Act No 21 of 2017

3.3.4.2 Children Act, 2001

The Children's Act of 2001 defines a disabled child as a child suffering from physical or mental handicap which necessitates special care for the child.²⁴¹ This definition is limited as it does not conclusively provide for learners and trainees with special learning needs.

Although the Act provides under Section 7 (1) that every child shall be entitled to education and which shall be the responsibility of the government no clear responsibilities are outlined as to what the government is to do in meeting this responsibility.²⁴²

The Children Act was enacted before the Kenyan Constitution 2010 hence its provisions on free education preceded the constitutional provisions on the same. It borrows heavily from Article 28 of the United Nations Convention on the Rights of the Child that included provision of free basic education to all children.²⁴³

The Act is clear that disabled children should be treated with dignity and be accorded among other services education and training free of charge or at a reduced cost where possible this is as provided under section 12 of the Act. The Act makes a bold move when it gives The High Court authority to enforce provisions of section 4 to 19 which includes section 7 to 12 on disabled children. This move might help in ensuring the rights of the disabled Children are enforced but if left unchecked or if not read with the Chief Justice guidelines on the same might bring even more confusion, contradictions and overlaps between, sector policies, case law other statutes and the constitution with regard to the rights of learners and trainees with learning disabilities.

²⁴¹ The Children Act 2001

²⁴² The Children Act 2001, s 7(1)

²⁴³ United Nations Convention on the Right of the Child 1990

3.3.4.3 Persons with Disabilities Act, 2003

The Act is the first Persons with Disabilities Act in Kenya. It sets ground for a legal framework that outlaws all forms of discrimination on people with special needs and disabilities.²⁴⁴ From the very onset there is need for Parliament to either amend this Act *mutatis mutandis* or all together repeal the same so as to ensure that the Act is in conformity with the Constitution of Kenya, 2010. The Act defines disability to include learning or physical incapability which impacts adversely on social, economic, employment or environment participation.²⁴⁵ Having persons with learning disabilities included in the definition of a disable person is a bold move that moves beyond the exclusions of learners with learning disabilities as people in need of special education.

The Act goes on to establish a National Council for Persons with Disabilities as provided for under section 3 of the Act.²⁴⁶ Among the key responsibilities of the National Council for Persons with Disability includes achieving equal opportunity for persons with disability by ensuring to the maximum extent possible that they obtain education and employment.²⁴⁷ Before enactment of the Persons with Disabilities Act there was no centralized body that facilitated and catered for the interests of the disabled people, many of the key decision touching on them were made in far reaching circulars, reports, commissions and special task forces.²⁴⁸

However, there is need to streamline the responsibilities of National Council for Persons with Disabilities so as to avoid overlapping of roles for responsibilities in managing

²⁴⁴ Persons with Disabilities Act 2003

²⁴⁵ Persons with Disabilities Act 2003, preamble

²⁴⁶ Persons with Disabilities Act 2003, s 3

²⁴⁷ Persons with Disabilities Act 2003, s 3(b)

²⁴⁸ The Special Needs Education Report 2009

Special Need Education as provided under the Basic Education Act of 2013 and the coordination committees under the Sector Policy for Learners and Trainees with Disability Implementation Guidelines although the latter is not impinged in law.

The National Council for Persons with Disabilities is also mandated under the Act to cooperate with government during national census to ensure that they get accurate data on persons with disabilities in the country for purposes of planning.²⁴⁹ The challenge here is waiting for 9 years until the census is held is a very long period of time to wait to collect data on learners and trainees with special educational needs, this is something that has to be updated on an yearly basis to ensure proper follow up monitoring and evaluation of all persons with disabilities but most importantly the learners and trainees with disabilities.

Section 18 (1) of the Act is geared towards ensuring inclusivity and integration of persons with disabilities stipulating that, learning institutions shall not deny admission of persons with disabilities to any course by only reason of their disability.²⁵⁰ Section 18(2) further provides that learning institutions shall take into account the special needs of persons with disabilities with respect to entry requirements, pass marks, auxiliary services, and use of school facilities, class schedule, and physical education among other such considerations.²⁵¹ This provision is ambitious and might need other supporting legislative frameworks to ensure that our curriculum encompasses the requirements of these provisions as much as possible.

²⁴⁹ Persons with Disabilities Act 2003, s 10

²⁵⁰ Persons with Disabilities Act, 18(3)

²⁵¹ Persons with Disabilities Act 2003,

Under the provision of Section 18 (3) a conflict between the 2018 Sector Policy for Learners and Trainees with Disability and the Persons with disability Act arises. When the Section 18(3) states that the government shall provide for formation of special schools and institutions for the deaf, the blind and the mentally retarded,²⁵² It is the use of the terminology ‘mentally retarded’ is against the provision of the Sector Policy of 2018 that desists from using terms that focuses on the disability rather than the person first. This is also in contravention of Article 54 1(a) of the constitution that provides that disable people should be treated with dignity and respect and referred in a manner that is not demeaning.²⁵³ The terminology here should be mentally handicapped and not retarded. The Persons with Disability Act may need to revise to encompass the wishes of the constitution 2010 and other current underlying interests.

Section 19 of the Act seeks to integrate systems of non-formal education for persons with all forms of disabilities.²⁵⁴ Integration and inclusion cannot be only in the non-formal education sector but more so in the formal education sector in pursuit of maximum integration of learners and trainees with special education needs with their peers.

3.3.4.4 Basic Education Act, 2013

The Basic Education Act of 2013 defines special needs education to include education for gifted or talented learners as well as learners with disability.²⁵⁵ Section 4 (s) provides for non-discrimination, encouragement and protection of marginalized persons and persons

²⁵² Persons with Disabilities Act 2003, s 18(3)

²⁵³ The Constitution of Kenya 2010, Art 54 (1)(a) Persons with disabilities is entitled to be treated with dignity and respect and to be addressed and referred to in a manner that is not demeaning

²⁵⁴ Persons with Disabilities Act 2003, s 19

²⁵⁵ The Basic Education Act 2013, preamble

with disabilities and special needs as one of the key values and principles guiding provision of basic education.²⁵⁶ As much as this provision is progressive there is need to enact clear legislation that promotes these values and principles to the latter.

A representative of the National Council of Persons with Disabilities established under The Persons with Disabilities Act of 2003 is guaranteed a spot in the National Education Board as provided for in section 10 1(d) of the Basic Education Act.²⁵⁷ A position is also reserved for one disabled person under the County Education Board as provided for in section 20 of the Act. Although these provisions are a step forward in ensuring that there is representation of disable persons in education governing boards issues of gender representation of persons with disabilities are not well addressed in providing a limitation of only one person on the National and County Boards respectively.

The Act also emphasizes on establishment of special and integrated schools for learners with disabilities by the Cabinet Secretary in consultation with the National Education Board and the County Education Boards.²⁵⁸ The National and County Education Boards are the only one to be consulted when setting Special and integrated schools leaners and trainees with disabilities. However, there is underrepresentation in these boards of people living with disability given the limited slots in the board s. All stake holders have a role to play if we are to avoid vacuums in establishing or enacting of legislation that provide for the establishment of special and integrated Schools.

²⁵⁶ The Basic Education Act 2013, s 4(s)

²⁵⁷ The Basic Education Act 2013, s 10(1)(d)

²⁵⁸ The Basic Education Act 2013,s 45(2)

The Cabinet Secretary is also mandated to make regulation prescribing the duration of Primary and Secondary education tailored to the needs of pupils pursuing special needs education.²⁵⁹ This is bold move towards ensuring equal opportunity for learners and trainees with special needs but unless read together with the recommendation of the stakeholders in the sector will result to ineffective or loopholes in determining the durations. The Cabinet Secretary shall also prescribe standards and requirements related to the conduct of the Schools making provisions of special needs education for pupils with special needs as provided for under section 46 2 (c) of the Basic Education Act.

The Basic Education Act gives a lot of responsibility to the Cabinet Secretary in consultation with the National and County Education Boards in managing educational issues of the disabled person a role that should be played more by the National Council on Persons with Disabilities. As the say goes, there is danger in concentrating power in one person.

3.3.4.5 Social Assistance Act, 2013

The Social Assistance Act has no specific provision on who a person with disability is despite disabled persons forming some of the most marginalized and vulnerable members of our communities. The Act further errs in section 23 when it states that persons with disability eligible for social assistance under the Act shall be only for persons who suffer from severe mental or physical disability.²⁶⁰ This provision does not cater for learners and trainees with learning disabilities among many other disability conditions and it is also in contravention of Article 54 (2) of The Constitution.²⁶¹

²⁵⁹ The Basic Education Act 2013, s 45(2)(b)

²⁶⁰ The Childrens Act 2001, s 7

²⁶¹ The Children's Act 2001, s 7-19

Section 23 (b) of the Act provides that social assistance will be given to the mental or physically disable person who is incapable of catering for their basic needs and has no known source of income or any other kind of support,²⁶² this is contrary to affirmative action on equality and freedom from discrimination as provided for under Art 27 (6) of the Kenyan Constitution. The provisions of the Social Assistance Act on disabled persons leaves more questions to be asked than any answers provided, it questions the knowledge of the legislators on the rights of the disabled person and as to who a disabled person which if left uncorrected will hinder the access of disable persons to pertinent Social Assistance services.

3.3.4.6 Case Law

Whereas Kenyan Courts have not expressed themselves clearly on the issue of right of education for children with learning disabilities, it has made a number of omnibus judgements and ruling that has a bearing on the subject. We consider a number of rulings on right to education, inclusivity, disability and mental health that one way or the other shape the subject of this discourse.

Kenya Society for the Mentally Handicapped v Attorney General and Others Nairobi* **Petition No. 155A of 2011 (Unreported):*

The petitioner brought a case alleging that the economic and social rights of persons with mental disabilities had been violated. The Court expressed itself as follows:

“[18] I think the petitioners have brought this case to address the whole spectrum of issues concerning persons with disabilities. In their submissions, the petitioners have dealt with

²⁶² The Constitution of Kenya 2010, Art 54 (2)

the right to education, the right to health, the right to employment, access to justice, the right to justice and political rights. In a nutshell, what the petitioner requires is for the Court to direct the State to take steps to adopt its proposals for reform and promotion of persons with disabilities. The Court's purpose is not to prescribe certain policies but to ensure that policies followed by the State meet constitutional standards and that the State meets its responsibilities to take measures to observe, respect, promote, protect and fulfil fundamental rights and freedoms and to a party who comes before the Court."

Gabriel Nyabola v Attorney General & 2 others [2014] eKLR

The Court in this was called upon to make a determination with reference to rights to education. The Court was emphatic on the rights of all children regardless of their disability in the following terms:

"28. Turning to the local situation, Article 43(1) (f) of the Constitution enshrines the right to education as part of the economic and social rights. It provides that, "Every person has the right to education." This provision is one amongst the other provision in the Constitution that deal with education. Under Article 53(1) (b) of the Constitution, children have the right, 'to free and compulsory basic education.' Under Article 55, the State is obliged to take measures including affirmative action to ensure that the youth have, "access relevant education, training and employment." Article 56(b) provides that the minority and marginalised groups are to be provided with, "special opportunities in educational and economic fields." The rights of persons with disabilities to access educational institutions and facilities are secured by Article 54 which requires that persons with disabilities be integrated into the society to the extent that is compatible with their interests."

The Court went on and stated that:

“As concerns the right to education, progressive realisation does not mean mere paper policies but deliberate and concrete steps taken to achieve free basic education for all on a non-discriminative basis, deployment of maximum available resources to ensure realization, avoid retrogressive measures and monitor enjoyment of the right.”

At paragraph 43, the Court concluded that the government had taken sufficient steps towards the realization of the rights to basic education and upholding the principle of non-discrimination in all matters related to child education.

MMM v Permanent Secretary, Ministry of Education & 2 others [2013] eKLR

The Court provided a broader interpretation of the right to education even where the issues raised were not directly linked to the rights to education as enshrined under Article 43 of the constitution. The learned Judge, Lenaola, J (as he then was) held thus:

“State’s performance in the implementation of the right to education is an onerous task in the absence of generally accepted criteria, benchmarks and methodology for evaluating the adequacy and effectiveness of steps taken towards its realization...”

The Court affirmed the principle of purposive interpretation of the constitution as follows:

“whereas this may not be the right case to extrapolate on the meaning of the right to education under **Article 43(f)** (*the issue here is limited to the right to a bursary and the arguments made were very narrow*), the following issues need to be brought to the attention of the Respondents as they formulate policies towards the realisation of that right to education.”

John Kiplangat Barbaret & 3 others v Attorney General & 4 others [2014] eKLR

In this case the government had been sued for failing to provide the relevant resources to a public school and as such barring the pupils of Sagamiam primary school from accessing the right to basic education.

“Article 21 (1) of the Constitution, places a fundamental duty on the state and every state organ to observe, respect, protect, promote and fulfil the rights and fundamental freedoms in the Bill of Rights. By failing to support the efforts of this marginalised community to realise their right to education, the State acted and is acting retrogressively.”

By default, this case clarified that the state has a duty to promote education and especially to children living in marginalised communities and those with disability and in particular, mental disability. Failure to provide the relevant equipment to enhance accessibility of education is ipso facto a contravention of the rights to basic education as enshrined in the constitution by the state.

3.4 Conclusion

This chapter has discussed the legislative and policy instrument that govern access to basic education by children with learning disabilities in Kenya, at the same time pinpointing the weakness that emanate from the instruments at national level in comparison with the international instrument governing the same area. It is evident from the above analysis that Kenya have a very robust policy and legal framework on the subject with a plethora of international instruments enacted in this respect. The enforcement and implementation aspects are the golden threads that Kenya lack to actualise the principles in these legislations. Crucially and without over emphasising, Kenya should ensure that its legal instrument abide by the Conventions in particular the CRPD that supports integration rather than exclusion of persons living with disability.

CHAPTER FOUR

COMPARATIVE ANALYSIS OF MODELS USED TO ACCESS EDUCATION BY CHILDREN WITH LEARNING DISABILITIES; A CASE STUDY OF SOUTH AFRICA, CANADA AND UNITED STATES OF AMERICA

4.0 Introduction

The state of access of education by children with special needs in Kenya is in a state of torpor. It is incumbent upon any state or Nation to ensure that children with special needs or any disability as the case may be receive quality education in a decent environment. It is given that successive Governments in the Republic of Kenya have since independence undertaken various measures - both in form of legislative and policy formulation to ensure access to education by children with learning disabilities, however what has been achieved so far is a tip of the iceberg. This chapter explores the different models used to facilitate access to education by children with special needs.

The aim of this chapter is to highlight different models of promoting access to education by children with special needs. Learning from the experiences of these countries, Kenya could include some of these models from Canada, USA and South Africa in their legislation. Implementation of different policies and legislative instruments advanced over the course of time in Kenya has been faced with enormous challenges including lack of skills and knowledge in differentiating the curriculum to address a wide range of learning needs. Hence the need to learn from the experiences of these countries on how best to empower teachers with necessary skills to cater for learners with diverse needs.

It is imperative that Kenya as a country move away from a “one size fits all” curricula that is rigid and raises unintentional barriers to learning by children with learning disabilities. Kenya should inculcate learner variability by suggesting flexible goals, methods, materials and assessment that empower educators to meet these varied needs. We therefore consider the following below:

4.1 United States of America

In the USA, the definition of Learning disabilities is found the federal special education law, the Individuals with Disabilities Education Act (IDEA). IDEA uses the term “specific learning disability (SLD).”²⁶³ According to IDEA, SLD is “a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, which disorder may manifest itself in the imperfect ability to listen, think, speak, read, write, spell, or do mathematical calculations. Such terms include perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia but does not include a learning problem that is primarily the result of visual, hearing, or motor disabilities, of mental retardation, of emotional disturbance, or of environmental, cultural, or economic disadvantage.”²⁶⁴ There are three federal laws established that undergird the rights of children and adults with LD. They ensure that all citizens receive the appropriate special education services as well as fair treatment in public schools, postsecondary education settings and the workplace.²⁶⁵

²⁶³ Cortiella, Candace and Horowitz, Sheldon H. *The State of Learning Disabilities: Facts, Trends and Emerging Issues*. New York: National Center for Learning Disabilities, 2014.

²⁶⁴ Individual with disabilities Education Act (20 U.S.C. § 1401 (30))

²⁶⁵ See, supra note 1.

4.1.1 The Americans with Disabilities Act²⁶⁶

The Americans with Disabilities Act (ADA) is another civil rights law that protects people with disabilities from discrimination in schools, the workplace and other environments. The ADA protects people who have a physical and mental impairment that substantially restricts one from major life activities. Since “learning” is considered such an activity under the ADA, students served under IDEA are also covered by this law.²⁶⁷

In addition, Section 504 of the Rehabilitation Act²⁶⁸ prohibits discrimination against people with disabilities in federally funded programs and activities. While this civil rights law doesn’t fund programs, it does permit the withdrawal of funds from programs that fail to comply with the law. Persons with physical or mental impairment that substantially restricts one or more major life activities are eligible for services under this section. Some schools use the section to support students with learning disability requiring reasonable accommodations or modifications.²⁶⁹

This piece of legislation specifically deals with area that is Employment, public accommodations, public services and Transportation and Telecommunications. This particular Legislation is essential to persons with disabilities as it enables them to get the services they need in the above areas. It should be noted that ADA as compared provided more remedies for parents to utilize especially where there is discrimination or segregation as compared to the IDEA below.

²⁶⁶ Public Law 101–336(1990) Americans with Disabilities Act.

²⁶⁷ Public Law 101–336(1990) Americans with Disabilities Act.

²⁶⁸ 1973

²⁶⁹ Rehabilitation Act, 1973

4.1.2 Individuals with Disabilities Education Act (IDEA) 1990²⁷⁰

Individuals with Disabilities Education Act (“IDEA”) provides special education and related services to children and youth with disabilities who are 3–21 years old. Enacted in 1975 as the Education for All Handicapped Children Act which was reauthorized to the current IDEA in 1990, this law guarantees each child a free appropriate public education tailored to his or her individual needs and delivered in the least restrictive environment appropriate to the individual’s needs. It also guarantees the right of children and their parents or guardians to timely evaluation, access to all meetings and paperwork and transition planning. IDEA specifies that children with any of 13 possible educationally handicapping conditions (including specific learning disabilities) are eligible for these services. IDEA also provides federal funds to states and local school districts to help support the additional costs of special education. The law provides several ways to address disputes between schools and parents, including mediation, due process hearings and written complaints to the state.²⁷¹

The Act was amended in 1997 where it strengthened the expectations and accountability for not only the children with disability but also their schools and teachers. The public schools were mandated to develop an appropriate Individual Educational Plan (IEP) for each of the qualified children. The IEP is understood to be a written document which draws from input from the special education teacher, the parents, specialists and the child’s general curriculum. It is meant to outline the academic goals and milestones to be taken by

²⁷⁰ Public Law 94–142, now named the Individuals with Disabilities Education Act, or IDEA), 20 U.S.C. §§ 1400 et. seq.

²⁷¹ Public Law 94–142, now named the Individuals with Disabilities Education Act, or IDEA), 20 U.S.C. §§ 1400 et. seq.

the child taking into account his disability and its severity.²⁷² The Act also makes it essential that the environment within which the pupil is to be placed ought to be least restrictive and further provides for grants to Federal States to assist in the development for children with disabilities.

As mentioned above, the IDEA is a detailed statute on matters touching on learning disabilities. It makes provision for “Child Find” and Funding based on Child count, which was an objective of the legislative body to ensure that the children with disabilities are identified.²⁷³ It intended that the funding mechanism of the public law through reimbursement shall be based on the number of children with disabilities that were served in special education schools. Despite this concept being critiqued as leading to segregation it has been hailed a unique method in helping the district undertake a sort of census to establish the number of children with disability.²⁷⁴

It further provides for a clear procedure for evaluation and eligibility determination of children with disability. The Child is to be evaluated in accordance to IDEA before the school personnel can begin the special programming.²⁷⁵ The parents ought to be involved and where the parent disagreed he may seek an opinion from an independent evaluator or professional. It follows that an eligibility determination should be made where the school district should guarantee appropriate service guided by his or her disability. Where the

²⁷² Ibid

²⁷³ Ibid

²⁷⁴ The National Association of State Boards of Education. *Winners all: A call for inclusive schools*. The report of the NASBE Study Group on Special Education. Alexandria, VA: NASBE, October 1992.

²⁷⁵ Public Law 94–142, now named the Individuals with Disabilities Education Act, or IDEA), 20 U.S.C. §§ 1400 et. seq.

school district arrives at a conclusion that a child is ineligible, the parent has a right to appeal against such a decision.

The IDEA ensures that there is a clear due process and parental input in every level of the process. The educators and school districts are under obligation to notify the parent for any proposed actions and seek his or her input.²⁷⁶ It further requires that the parents attend all meetings concerning placement of the child and that the parent has a right to appeal. The provision for due process is that the Act provides for a meticulous and detailed procedure which includes Notice of school's proposed actions, consent is given to evaluate, an appropriate evaluation is done, independent evaluation is done thereafter, consent is given for placement, the parent and teachers give input in Individualized Education Program, if aggrieved a parent may appeal, a 'stay put provision' is made which is where the parents do not consent the child is to stay in the current placement until the dispute is solved, finally there is a private right of action in federal court.²⁷⁷

In assessing this statute and how the Act has been applied in the American society we must analyze their jurisprudence and essentially how the courts have interpreted the provisions of this legislation. In *Florence Co. v. Carter*,²⁷⁸ the issue was whether the State ought to pay for a student with disability who is being educated in a private institution, the court held that the State is required to pay for tuition for a private school which the child has been placed while negotiations are ongoing. In yet another case of *School Comm. Of Burlington v. Mass DOE*,²⁷⁹ it held that parents who disagree with a proposed IEP can unilaterally

²⁷⁶ Ibid

²⁷⁷ Public Law 94-142, now named the Individuals with Disabilities Education Act, or IDEA), 20 U.S.C. §§ 1400 et. seq.

²⁷⁸ *Florence Co. v. Carter* (1993)

²⁷⁹ *School Comm. of Burlington v. Mass. DOE* (1985)

withdraw their child from public school and place them in a private school at public expense provided the said expense is reasonable.

Further, in *Zobrest v Catalina Foothills*²⁸⁰ where a school district had refused to provide for a sign language interpreter to accompany a deaf child to school, the court held that this service should be provided if the child was in a public school and since the interpreter was required under the Act, the school district had to provide. In *Cedar Rapids v Garret*²⁸¹ where a child needed a full time medical assistant to attend school, the court held that the school district must pay for the nursing services during the school hours and that the cost of this service did not negate the State's responsibility to provide it.

The American courts are responsive and progressive in interpreting the legal framework. The Statute itself gave room for a progressive and purposive interpretation which is essentially in a concept such the subject matter herein that keep on changing and evolving and thus requires more protection under law.

The Kenyan legal framework is lacking and is by far as compared to the progressive American legal framework. The American legal framework should be the guiding light to be borrowed heavily by both the legislature and the judiciary alike.

4.2 South Africa

South Africa has ratified the Convention on the Rights of persons with Disabilities (CRPD). The foregoing convention affords all persons with disabilities the right to Education. South Africa has ratified the CRPD without reservations and it is therefore bound by its provisions. Article 24 of the CRPD, in affording the right to education for

²⁸⁰ *Zobrest v. Catalina Foothills* (1993)

²⁸¹ *Cedar Rapids v. Garrett* (1998)

persons with disabilities, emphasises the principles of non-discrimination and requires state parties to realise the right on the basis of equal opportunity.

The South African Constitution affords the right to basic education to “everyone”. The reference to everyone includes children with disabilities. The South African constitutional court has in previous occasions averred that the right to basic education to be an “unqualified” right and it is therefore “immediately realisable”; unlike other socio-economic rights which are qualified by a duty to make reasonable efforts within available resources towards progressive realisation.²⁸²

South Africa has enacted the Schools Act.²⁸³ The Act makes compulsory education for children between the ages of 7 and 15 and requires that relevant government officials make special needs education available for all children with disabilities. Furthermore, the government has drafted a policy document – Education White Paper 6 – to give effect to the right to education for persons with disabilities to which lays a detailed policy framework regarding disabilities.

It should be noted that historically, South Africa as a nation endured an apartheid regime which promoted segregation based on color and race. The act of segregating the people also affected the provision of basic education especially to children with disabilities thus they were segregated not only based on their disability but also on the color of their skin. A concept that can be described as multiple discrimination. Thus, the disabled white minority were given preference over the black majority who were disabled. In light of the above,

²⁸² *Equal Education and Another v Minister of Basic Education and Others* (276/2016) [2018] ZAECBHC 6; [2018] 3 All SA 705 (ECB); 2018 (9) BCLR 1130 (ECB); 2019 (1) SA 421 (ECB) (19 July 2018).

²⁸³ South African Schools Act no. 84 of 1996.

after the country got independence it undertook a radical transformative shift in an attempt to create a more just and equal society.

4.2.1 White Paper No. 6 on Special Needs Education²⁸⁴

This policy was enacted as a result of the need for changes with regards to provision of education with intent to make it more responsive and sensitive to the diverse nature of the nature of education.²⁸⁵ Initially before this policy framework, the White paper No. 1 on Education and Training²⁸⁶ which did not properly cater for learners with special education thus necessitates the current paper. The White paper No. 6 advocates for the introduction of an inclusive education and training system which provides for a detailed funding strategy and lists out the key steps to be take in establishing an inclusive educational system for the South African people.²⁸⁷

Its drafters opine that the system can only be developed over a long term project, but with actions being taken in the short to medium term which ought to provide models for a later system-wide application.²⁸⁸ The Short to medium term clarifies on aspects of capital, material and human resource necessary to building an inclusive educational and training system which shall be progressively and consistently be translated to the whole system.²⁸⁹

The paper recognizes several factors essential in citing it in comparison to the Kenyan system. It moves away systematically from using segregation accorded to categories of

²⁸⁴ Education White Paper 6 on Special Needs Education: Building an inclusive education and Training system. July 2001

²⁸⁵ Department of Education (2001)

²⁸⁶ Department of Education (1995)

²⁸⁷ Education White Paper 6 on Special Needs Education: Building an Inclusive Education and Training System, July 2001 Regulation 1.5 pg.16

²⁸⁸ Education White Paper 6 on Special Needs Education: Building an Inclusive Education and Training System, July 2001 Para 3.11

²⁸⁹ Ibid n. 21 Chap. 4.

disabilities as an organizing tool for institutions. It relied on an intensified support need to transform a debilitating impact on the disabilities. It emphasizes on the support needed by learners through establishing a fully serviced school that will be biased towards particular disability depending on its need and support. It directs how the already existing institutions will be accessed and further how the additional resources which is required will be accessed. The paper indicates how the learners with disability will be identified, assessed and incorporated into the special, full-service and ordinary schools in an incremental manner.

Recognizing the need appreciation in diversity of learning and teaching, it makes provision for strategies and interventions to assist educators to cope and ensure that the transitory learning disabilities that often occur to be dealt with.²⁹⁰ In further recognition and appreciation of the complexity of the process to which it intended to achieve, the drafters in an attempt to address the continuous changing attitudes and behaviours among the trainers, educators, parents and communities recognized that it all need to be researched, monitored and evaluated.²⁹¹ Thus mandated by the Department of Education, it created the National Commission on Special Needs in Education and Training and a National committee on Education on Education Support Services who released a joint report to the Minister who in turn did a consultative report.²⁹²

²⁹⁰ Ibid

²⁹¹ Ibid

²⁹² Department of Education(1999)

4.2.2 Social Assistance Act²⁹³

This piece of legislation was amended in 1994 to make regulation with regards to making grants and financial awards to certain people and bodies. It then made provision for disable people to benefit through disability. The Act is administered by the Department of Social Development of Social Development's social assistance program where it provides for the framework for awarding the disability, the dependency grants and grant-in-aid.

The criteria applied in this statute grants the disability grant to the adults who are the age of majority who are unlikely to find employment due to their disability while the dependency grant is given to disabled children and finally the grant-in-aid belongs to disabled adults who may or may not be benefitting from the disability grant.

The South African system on the Learning disabilities appreciates unlike the Kenyan one a system approach to disability law. It undertook a transformative approach in identifying and dealing with the past injustices that affected the sector. It further appreciated that the radical change cannot take place at once that it needed a medium strategy in order to achieve a long term goal. South Africans further undertook a collective and inter-departmental analysis of the system based on research, monitoring and evaluation in creating a proper for Learning disabilities.

4.3 Canada

The Canadian system on Learning disabilities is a mature and fully developed system. Its democratic setting has given more power to the provinces which has in turn developed its own detailed structures. Suffice to note each province has approached the concept of

²⁹³ Social Assistance Act No. 59 of 1992

disabilities uniquely and differently from the rest of the provinces. In this regard, we shall focus on Ontario province as a representation of the approach taken by the Canadians in training and teaching persons with learning disability.

4.3.1 Ontario Province on Students with disabilities²⁹⁴

The Ontario province has enacted the Ontario Human rights Code²⁹⁵ which approaches this concept from a human rights perspective. Through the code, a policy on accessible education for students is enacted, 2018 which is an improvement of the 2004 guideline on accessible education which updates current arising social science research issues, jurisprudence from the court, legislation and new development on the International Human rights law.

The Code has maintained certain policy positions that characterize its uniqueness where it has recognized the impact of “social handicapping.”²⁹⁶ The code further recognizes and lays emphasis on promoting integration and full participation, inclusive design in the educational context.²⁹⁷ It acknowledges the possibility of discrimination on students not only disable but have an additional ground as listed in the code. The Code through its policy recognizes the emerging issue of albeism which impacts the delivery of education among students with disabilities.²⁹⁸ It further recognize that information pertaining to the medical or healthcare state of the student who is disabled should be provided to the

²⁹⁴ Ontario Human Rights Commission, ‘Accessible Education for Students with Disabilities’ March 2018 <www.ohrc.on.ca> accessed on 11 September 2019

²⁹⁵ Ontario *Human Rights Code*, R.S.O.1990, c. H.19.

²⁹⁶ Ibid

²⁹⁷ Ibid

²⁹⁸ See The OHRC *Policy on albeism and discrimination based on disability [Disability policy]*, 2016 available online at:

http://ohrc.on.ca/sites/default/files/Policy%20on%20ableism%20and%20discrimination%20based%20on%20disability_accessible_2016.pdf

educational providers in supporting requests for accommodation and other special requests.²⁹⁹

The Code while recognizing the ever changing definition of the word “disability” makes a detailed definition.³⁰⁰ It defines “disability” to include “a learning disability, or a dysfunction in one or more of the processes involved in understanding or using symbols or spoken language.”³⁰¹ The detailed definition goes further to note that disability includes both present and past conditions, as well as a subjective component based on perception of disability. It should be appreciated that the definition is detailed and considers the possibility that disability might arise after an occurrence such as an accident and that it can also be noted that it recognizes that such disability could come to an end or maybe cured through medical process such cases the code provides should be treated as “disabled.”

The Code makes an elaborate procedure on Special education for the disabled. It gives the procedure for identifying an exceptional student and how to place that student in proper school.³⁰² It elaborates that there are five categories of students who can be said to be exceptional these are: behavioural, communication, intellectual, physical and multiple. This exceptional student once it is believed by the parents or teachers a written request is made to the Identification Placement and Review Committee (IPRC).³⁰³ The said report may also be made through the principal and the Principal is obliged to refer the student to

²⁹⁹ Ontarion Human Rights Commission ‘Accessible Education for Students with Disabilities’ March 2018 www.ohrc.on.ca> accessed on 11 September 2019 para 8.1 on Principles of Accommodation

³⁰⁰ Section 10 of the Ontario Human Rights Code

³⁰¹ Section 10(a), Ibid

³⁰² Ontario Human Rights Code, R.S.O.1990, c.H.19

³⁰³ Ibid

IPRC and to further forward the guide to special education to the parent and to notify the parent on the likely date the might be heard.³⁰⁴

Upon the hearing the said request, the committee determines whether the student is exceptional and thus subject to special education. In its decision, it should incorporate the student's strength and needs, the type of exceptionality and the supposed classroom placement.³⁰⁵ The committee has the option of placing the exceptional student in the regular classes with special education services, or regular class but taken out to a special education class, or services of special education instruction from a special education teacher or specialist, or special education class with part of the day in a regular class, or special education class for the whole day or be placed in a special education class.³⁰⁶

Where the parents of the student are aggrieved or disagree with the decision of the IPRC committee, they may within 30 day appeal to the Special Education Appeals Board (SEAB) who may uphold the committee's decision or rule otherwise.³⁰⁷ If they are not satisfied, the parents have a further chance of appeal at the Special Education Tribunal where they may be represented by a lawyer and have the dispute determined to finality. It should be noted that the decision by IPRC shall be subject to review once every school year.

It follows that upon the committee identifying the student as being exception, a document known as an Individual Education Plan (IEP) which contains specific learning expectation and the school's outline of the educational service that shall be provided to that particular

³⁰⁴ Ibid

³⁰⁵ Ontario Human Rights Code, R.S.O.1990, c.H.19

³⁰⁶ Ibid

³⁰⁷ Ibid

student.³⁰⁸ The IEP addresses the individual challenge faced by the particular and provides the educational plan to be followed by the particular institution or trainer or educator who shall be educating the exceptional student.

In comparison therefore to the Kenyan system on special education system, the Kenyan system lags behind as it does not have an elaborate procedure for addressing the selection process of learning disabilities. The Canadian system with respect to Ontario Province is much elaborate and more concerned with the individual rather than a systemic approach to issues of provision of Special education where a clear plan is drawn and followed through and such plan is subject to challenge and review. This is an aspect that Kenya should consider in order to improve the rights of children with learning disabilities to access education.

4.4 Conclusion

In conclusion, from the previous chapters we note that Kenya lacks behind in its legislative framework concerning learning disabilities. The society in itself further sidelines its members of the society who are person with learning disabilities.

The USA approach should be emulated in the manner that we should first undertake a census and establish the exact number of children suffering from learning disability. Further, the mode in which we apportion finances and budgetary allocation should be almost similar to that of the US wherein we consider the child as an individual rather than a population of people per area. The elaborate procedure of identifying and placing person with disabilities should be similar to both the American and Canadian.

³⁰⁸ Ibid

Regarding the Canadian system, Kenya ought to borrow their approach towards an individual person and should in similarity to that of the Ontario province. The Kenyan system also should set up proper and inclusive procedure in ensuring the child who has a learning disability gets to be evaluated and placed in a proper institution. We should further develop policy that incorporates the requirement that Individual Education Plan(IEP) is developed for every child with a learning disability.

Finally, Kenya should borrow from the South African the strategic and system approach needed in transforming and implementing the recommendation that shall be made in the next chapter.

CHAPTER FIVE

CONCLUSION AND RECOMMENDATIONS

5.0 Conclusion

The academic voyage was sparked by the need to unearth this crucial yet most ignored class of persons- children living with learning disabilities. Indeed, according to the EFA Global Monitoring Report 2010: “Reaching the marginalized,” children with disabilities remain one of the main groups being widely excluded from quality education. Disability is recognised as one of the least visible yet most potent factors in educational marginalisation. Access to basic education by children with learning disabilities in Kenya has for a long time lacked the proper attention requisite to ensure that children with the foregoing challenges can access education in proper environments.

Accordingly, in this academic excursion, the paper is divided in 4 chapters and considered the challenges that children with learning disabilities in Kenya face, analyzing the interventions that Kenya has taken to address the challenges, examining the persistence of these challenges in spite the interventions, and proposes a raft of reforms – legal, institutional, policy, among others – to enable Kenya effectively address the challenges.

As evident in the first chapter, the main aim of this dissertation was to assess the effectiveness of the existing legal framework on access to basic education by children with learning disabilities in Kenya. To achieve this, the understanding of the existing legislative instruments and policy framework together with international treaties and conventions that Kenya has ratified that govern this parlance was essential. The paper traced the implementation mechanisms that Kenya has put in place and what other countries have done in their quest to achieve inclusive education for children with learning disabilities.

After that, the thesis examined the adequacy of the current level of regulatory, normative and policy framework that Kenya has in place. Finally, it proffered wide and extensive recommendation which, if implemented by Kenya, can ensure an effective inclusive education for children with learning disabilities in Kenya.

5.1 Thesis Summary & Findings

Chapter one did introduce the topic and sets out the blueprint for the whole thesis. It is divided into various sections. Section one provided the background to the study by interrogating and analyzing the what learning disability entails, the ratio of students with learning disabilities attending mainstream primary schools, further the background set out to draw a distinction between learning disabilities and learning problems. Subsequently, Section two dealt with the theoretical framework, which examines the different theories advanced by scholars that support the thesis in the remaining chapters to be discussed. Thirdly, this section dealt with the problem statement that addresses the conundrum that this thesis tries to answer. In addition to this, section four dealt with the justification of the study which enumerates the underlying need for the thesis in question. Finally, we have sections dealing with the objective of the study, research question, hypothesis, theoretical framework, literature review and chapter breakdown concluding chapter one.

In Chapter two, a general overview on challenges that Kenya faces in implementation of access to basic education by children with learning disabilities. The Chapter evaluated the current level of regulatory, normative and institutional accountability framework at all levels of government in Kenya. Further, it been demonstrated that there are a number of challenges that children living with disability face. For instance, that there is high prevalence, yet low detection of learning liabilities attributed to lack of capacity building

among other reasons. It is also evident from the research that these children also suffer from discrimination and exclusion created by the segregated learning system of special schools that Kenya has adopted. Finally, it was also observed that these children equally lack learning assisted technology to reasonably accommodate them so that they are able to fully participate in class work among other challenges.

Chapter three, the thesis unearths the existing legislative framework that governs access to basic education by children with learning disabilities. It begins with interrogating whether the existing framework is in tandem with international convention and treaties that Kenya has ratified as a country. The discourse revealed the deficit in terms of enforcement and implementation mechanism in place as a result of; inadequate legal and policy framework, failure to provide inclusive learning environment; lack of adequate and clear guidelines of implementing and delivering special needs education et al. In particular, and very prominently, whereas the CRPD emphasizes on inclusivity and lack of segregation, the Kenyan legal framework is pro- private schools – a clear construct from the international instrument that Kenya is party to.

Chapter four majorly adopted a comparative approach inquiry into an analysis of the countries such as Canada, South Africa and United States of America. Furthermore, the chapter examined the new emerging trends in international law, and what the three countries of choice have done to achieve new emerging trends in the parlance of inclusive education for children with learning disabilities in their jurisdiction. Most of the findings of this chapter frame the recommendation section herein.

The research has unearthed several findings as discussed above. First, that children with learning disabilities in Kenya have reduced chances of access to basic education. It has also

been demonstrated that Kenyan communities need to offer more support towards education of children with learning disabilities. Equally Kenyan institutions and schools lack the requisite preparedness to handle children with learning disabilities. Finally, the study demonstrates that Kenya Lacks adequate school infrastructure and teacher capacity to educate persons with learning disabilities.

5.2 Recommendations

The Kenyan government has shown immense commitment in terms of ratification of international treaties and conventions that are tailored towards achieving exclusive education to children with learning disabilities. However, the implementation has been hampered by lack of documentary framework for implementation. The foregoing is recommendation that this thesis wishes to bring forth. Whereas the recommendations do not tally in terms of the numbers with the findings in each chapter, the same has been categorized broadly into three classes that is; recommendations for implementation by the National and County governments and recommendation to the parents and communities with children with learning disabilities. This is to ensure that the appropriate audience is captured accordingly.

5.2.1 Recommendation to the National Government.

1. Develop policies to facilitate efficient inclusive educational practices.
2. Mobilize grass root leadership to ensure compulsory educational is a reality for all children through ensuring presentation and enrolment of children with learning disabilities to learning institution.
3. Maintaining data on children with learning disabilities up to the lowest administration levels.

4. Provide sufficient budgetary allocation to schools with children with learning disabilities and conducting regular audits.
5. Capacity building of teachers in learning institutions and increasing teacher pupil ratio in schools with Children with learning disabilities.

5.2.2 Recommendation to County Governments

As per Article 189 of the Constitution, the National and County Government should cooperate to develop strategies for monitoring learning by children with learning disabilities and ensure that access to basic education for children with special needs is realized. Under Article 183³⁰⁹ Counties are empowered to enact and implement county legislation which can improve the access to basic education for children with special needs.

1. Capacity building of teachers in learning institutions and increasing teacher pupil ratio in schools with Children with learning disabilities at the county level.
2. Develop policies to guide transition
3. Sensitize communities on the need to educate children with learning disabilities and the need for inclusive education.
4. Develop strategies for monitoring learning by children with learning disabilities.

5.2.3 Recommendation to Parents and Communities

The law cannot be fully implemented in this respect without involving the relevant stakeholders. In particular, there is need to resent children with learning disabilities for

³⁰⁹ The Constitution of Kenya 2010

admissions to learning institutions. The communities must also decolonize their minds from barbaric and myopic yet discriminatory perception of seeing children with learning disabilities as unproductive, burdensome and cursed children to help them realise their full potential. The communities and parents are also advised to collaborate with schools in the education of the children with learning disabilities so that the education of these children is fully monitored.

Strongly, the paper recommends that the community does take a more active role in the education of children with learning disabilities. Just as donations and fundraisings are often done to help educate regular students, so should it be for children with learning disability. Finally, it is recommended that communities and parents must work towards the inclusivity of children with disability in the family and societal activities so as not exclude them -denying them of opportunity to interact with others and grow fully.

5.3 Conclusion

This thesis has assessed and analyzed the legal framework governing access to basic education by children with learning disabilities in Kenya. The thesis has also addressed the question of how Kenya can come with a regulatory approach to ensure inclusive education for children with learning disabilities and promote access to basic education for the same children. The thesis has unearthed the weak links and gaps at both National and county levels to be addressed in the quest to promote access to basic education to children with learning disabilities. The thesis has shown that there is a modicum of hope for Kenya with regards to improving access to basic education for children with learning disabilities. First, there exist a plethora of existing legislative instruments in place that can be cushioned by

strengthening the enforceability mechanism. Secondly, domestication of the international treaties and conventions also is a viable modality as see in this thesis.

However, this study has shown that there are a number of challenges that may frustrate the efforts towards an effective regulatory framework itself. This thesis attempted to address those challenges and recommendations to forestall the likely negative consequences. It is argued that if those recommendations are implemented, Kenya would be strategically positioned to handle the problems of access to basic education for children with learning disabilities. The paper, therefore, hopes that with these recommendations that have been enumerated herein, Kenya will protect the rights of children with learning disability so as to help realise their full potential.

BIBLIOGRAPHY

Books

- Bates, A.W. and Poole, G., *Effective Teaching with Technology in Higher Education: Foundations for Success*. (Jossey-Bass, 2003).
- Beth S.A., *Mobilizing for Human Rights: International Law in Domestic Politics*. (New York: Cambridge University Press, 2009).
- Critchley, M. *The Dyslexic Child*. (Charles C. Thomas, 1970).
- Daniel W/Gabriel, Hassen Mohamed, 'Teaching Material on Jurisprudence' (2008) Ethiopian Justice and Legal Research Institute.
- Donovan, M.S. and, C.T Cross., *Minority Students in Special and Gifted Education*. (National Academies Press, 2002)
- Malpas, J., "Donald Davidson", *The Stanford Encyclopedia of Philosophy* (Winter 2012 Edition), Edward N.Zalta(ed.).

Journals Articles and Book Chapters

- Adoyo, P.O. and Odeny, M.L., *Emergent Inclusive Education Practice in Kenya, Challenges and Suggestions*. (International Journal of Research in Humanities and Social Studies Volume 2, Issue 6, June 2015, PP 47-52)
- Adoyo, P.O., *Educating Deaf Children in an Inclusive Setting in Kenya: Challenges and Considerations*. (Electronic journal for inclusive education, 2007 2(2) 8).

- Carew M.T., Deluca M, Groce N., and Kett M, *The Impact of an Inclusive Education Intervention on Teacher Preparedness to Educate Children with Disabilities Within The Lakes Region of Kenya*. (International Journal of Inclusive Education, 2019 23(3), pp.229-244.)
- Chabeda-Barthe J., Wambua T., Chege W.L, Hwaga D., Gakuo T., and Rotich G.C, *Child Developmental Disabilities, Caregivers' Role in Kenya and Its Implications on Global Migration*. (International journal of environmental research and public health, 2019 16(6), p.1010.)
- Chitiyo M., Odongo G., Itimu-Phiri A., Muwana F., and Lipemba M., *Special Education Teacher Preparation in Kenya, Malawi, Zambia, And Zimbabwe*. (Journal of International Special Needs Education, 2015 18(2), pp.51-59.)
- Chomba J., Mukuria G., Tumuti S., and Bunyasi B., *'Education for Students with Intellectual Disabilities in Kenya: Challenges and Prospects'*. (University of Nairobi, 2014)
- Elchhorn M., *"Policy and Practice in Postsecondary Education: The Transitional experience for students with learning disabilities in India; (Working Paper 2025-01, November 2015)"*
- Elder B.C., 2015. *Right to Inclusive Education for Students with Disabilities in Kenya*. (Journal of International Special Needs Education, 2015, 18(1), pp.18-28.)
- Elder B.C., Damiani M.L., and Oswago B.O., 2016. *From Attitudes to Practice: Utilising Inclusive Teaching Strategies in Kenyan Primary Schools*. (International Journal of Inclusive Education, 2016, 20(4), pp.413-434.)

- Eunice L.A., Nyangia E.O., and Orodho J.A., *Challenges Facing Implementation of Inclusive Education in Public Secondary Schools in Rongo Sub-County, Migori County, Kenya*. (IOSR Journal of Humanities and Social Science (IOSR-JHSS), 2015, 20(4), pp.39-50.)
- Gathumbi A., Ayot H., Kimemia J., and Ondigi S., *Teachers' and School Administrators' Preparedness in Handling Students with Special Needs in Inclusive Education in Kenya*. (Journal of Education and Practice, 2015, 6(24), pp.129-138.)
- Kangethe A.T.W., Simiyu D.N., and Njoroge M.G., 2016. *E-Learning and Disability Mainstreaming*. (International Journal of Academic Research in Business and Social Sciences, 2016 6(6), pp.22-43.)
- Kiarie M.W, *Education of Students with Visual Impairments in Kenya: Trends and Issues*. (International Journal of Special Education, 2004 19(2), pp.16-22.)
- Kwamboka G.O.R., *'Nature and Prevalence of Learning Disabilities Among Standard Three Primary School Pupils in Starehe Division of Nairobi Province, Kenya'* (Masters of Education Thesis, University of Nairobi 2004.)
- Lyon, G. R., Fletcher, J. M., Shaywitz, S. E., Shaywitz, B. A., Wood, F. B., Schulte, A., et al. (2001). *Rethinking learning disabilities*. In C. E. Finn, Jr., R. A. J. Rotherham, & C. R. O'Hokanson, Jr. (Eds.), *Rethinking special education for a new century*. Washington, DC: Thomas B. Fordham Foundation and Progressive Policy Institute
- Mutua K., and Dimitrov D.M., *Prediction of School Enrolment of Children with Intellectual Disabilities in Kenya: The Role of Parents' Expectations, Beliefs, and Education*. (International Journal of Disability, Development and Education, 2001, 48(2) 179 – 191)

- Muuya J., *The Aims of Special Education Schools and Units in Kenya: A Survey of Head teachers*. (European Journal of Special Needs Education, 2002, 17(3), pp.229-239.)
- Nasser K., '*Diagnosing Learning Disabilities in a Social Education by an Intelligent Agent Based System*' (International Journal of Advanced Computer Science and Applications (2013) 1.)
- National Gender and Equality Commission, '*Access to Basic Education by Children with Disability in Kenya*' (Government of Kenya, 2006)
- Ndirangu E., and Midigo R., 2019. *Understanding the lived experiences Caregiving for Children Living with Disabilities in Mukuru Slums, Kenya; Implications for Health and Wellness in Caregiving*. (International Journal of Health and Biological Sciences, 2019, 2(1), pp.24-31.)
- Nthenge M., '*The Basic Education Act of 2013 as a tool for advancing early childhood development and education for children with disabilities in Kenya*' (5 African Disability Rights Yearbook, 2017, 3-24 <http://doi.org/10.29053/2413-7138/2017/v5n1a1>)
- Odongo G., and R. Davidson, *Examining the Attitudes and Concerns of the Kenyan Teachers toward the Inclusion of Children with Disabilities in the General Education Classroom: A Mixed Methods Study*. (International Journal of Special Education, 2016, 31(2), p.n2.)
- Okongo R.B., Ngao G., Rop N.K, and Nyongesa W.J., 2015. *Effect of Availability of Teaching and Learning Resources on the Implementation of Inclusive Education in*

Pre-School Centers in Nyamira North Sub-County, Nyamira County, Kenya.
(Journal of Education and Practice, 2015, 6(35), pp.132-141.)

Ontario Human Rights Code *Policy on ableism and discrimination based on disability*

[*Disability policy*], 2016 available online at:

http://ohrc.on.ca/sites/default/files/Policy%20on%20ableism%20and%20discrimination%20based%20on%20disability_accessible_2016.pdf

Ontario Human Rights Commission, 'Accessible Education for Students with Disabilities'

March 2018 Accessed from: www.ohrc.on.ca

Orodho J.A., Waweru P.N., Ndichu M., and Nthinguri R., *Basic Education in Kenya:*

Focus On Strategies Applied to Cope with School-Based Challenges Inhibiting Effective Implementation of Curriculum. (International Journal of Education and Research, 2013, 1(11), pp.1-20.)

Parkin E, Kennedy S., Bate A., Long R., Hubble S., Powell A., *Learning Disabilities-Policy and Services.* (Briefing Paper number 07058, 18 September 2018.)

Taderera C., and Hall H., *Challenges faced by parents of children with learning disabilities in Opuwo, Namibia.* (African Journal of Disability, 2017 (Online), 6, pp.1-10.)

Mwoma T., 'Education for children with special needs in Kenya: A review of related literature' (Journal of Education and Practice ISSN 2222-288X (online) Vol 8, No.28.2017. Retrieved from www.iiste.org)

Theory into Practice, Vol. 48, No. 1, Classroom Assessment (Winter, 2009)

Gauri V. and Gloppen S., *Human Rights Based Approaches to Development Concepts, Evidence, and Policy.* (Polity. 44. 10.2307/41684501, 2012)

Bunyi W., G., *The quest for quality education: the case of curriculum innovations in Kenya*. (European Journal of Training and Development, 2013, 37(7), pp.678-691.)

Wafula R., M. Poipoi, R. Wanyama, and B. Nyakwara, '*Early identification of Learning Disabilities among Standard Three Pupils of Public Primary Schools in Butere District, Kenya*' (Journal of Emerging Trends in Educational Research and Policy Studies 2019).

Journals

Aseka. and A.S. Kanter, *The Basic Education Act of 2013: Why it is One Step Forward and Two Steps Back for Children with Disabilities in Kenya*, (African Disability Rights Yearbook. 2. 35.,2014.)

Wolf-Fordham S., C. Curtin, M. Maslin, L. Bandini, and C.D. Hamad, *Emergency Preparedness of Families of Children with Developmental Disabilities: What Public Health and Safety Emergency Planners need to know*. (Journal of emergency management 2015(Weston, Mass.), 13(1), p.7.)

Woolman D.C , 2001. *Educational Reconstruction and Post-Colonial Curriculum Development: A Comparative Study of Four African Countries*. (International Education Journal, 2001, 2(5), pp.27-46.)

Wu, T.F., Chen, C.M., Lo, H.S., Yeh, Y.M. and Chen, M.C., 2018. Factors Related to ICT Competencies for Students with Learning Disabilities. *Journal of Educational Technology & Society*, 21(4), pp.76-88.

Abosi O., 2007. *Educating Children with Learning Disabilities in Africa*. (Learning Disabilities Research & Practice, 2007, 22(3), 196 – 201.)

- Adam, T. and Tatnall, A., 2018. The value of using ICT in the education of school students with learning disabilities. *Education and Information Technologies*, 22(6), pp.2711-2726.
- Beltempo, J. and Achille, P.A., 1990. The Effect of Special Class Placement on the Self-Concept of Children with Learning Disabilities. *Child Study Journal*, 20(2), pp.81-103.
- Bruce, S.M. and Venkatesh, K., 2014. Special education disproportionality in the United States, Germany, Kenya, and India. *Disability & Society*, 29(6), pp.908-921.
- Elizabeth Parkin, Steven Kennedy, Alex Bate, Rob Long, Sue Hubble, Andrew Powell, Learning Disabilities- Policy and Services. Briefing Paper number 07058, 18 September 2018.
- Gona, J.K., Mung'ala-Odera, V., Newton, C.R. and Hartley, S., 2011. Caring for children with disabilities in Kilifi, Kenya: what is the carer's experience? *Child: care, health and development*, 37(2) 175 – 183.
- Heinrich, Carolyn J., Jennifer Darling-Aduana, and Caroline Martin. "The Potential and Prerequisites of Effective Tablet Integration in Rural Kenya." (2018).
- Kenya National Commission on Human Rights, *Silenced Minds: the Systematic Neglect of the Mental Health System in Kenya* (A Human Rights Audit of the Mental Health System in Kenya, November 2011) 17 – 43.
- Kenya Sector Policy Implementation Guidelines for Learners and Trainers with Disabilities (May, 2019)

- Kimosop, P.K., Otiso, K.M. and Ye, X., 2015. Spatial and gender inequality in the Kenya certificate of primary education examination results. *Applied Geography*, 62, pp.44-61.
- Chomba M.J., G. Mukuria P.W.; Kariuki; S.Tumuti, B.A. Bunyasi, “Education for Students with intellectual Disabilities in Kenya: Challenged and Prospects”
http://erepository.uonbi.ac.ke/bitstream/handle/11295/84802/Chomba_Education%20for%20Students%20with%20Intellectual%20Disabilities%20in%20Kenya.pdf?sequence=2&isAllowed=y
- Mbugua, Z.K., Kibet, K., Muthaa, G.M. and Nkonke, G.R., 2012. Factors contributing to students’ poor performance in mathematics at Kenya certificate of secondary education in Kenya: A case of Baringo county, Kenya.
- Ministry of Education Science and Technology, Sessional Paper No 1 of (2005), A Policy framework for Education Training and Research
- Ministry of Education, Sector Policy for Learners and Trainees with Disabilities (May, 2018)
- Ministry of Education; Kenya Education Sector Programme: *Delivering Quality Education and Training to All Kenyans*, (2009) Government Printers
- Morningstar, M.E., Kurth, J.A. and Johnson, P.E., 2017. Examining national trends in educational placements for students with significant disabilities. *Remedial and Special Education*, 38(1), pp.3-12.

- Muga, E., 2003. Screening for disability in a community: the 'ten questions' screen for children, in Bondo, Kenya. *African health sciences*, 3(1), pp.33-39.
- Obradović, S., Bjekić, D. and Zlatić, L., 2015. Creative teaching with ICT support for students with specific learning disabilities. *Procedia-Social and Behavioral Sciences*, 203, pp.291-296.
- Ogadhó, W.A., Ajowi, J. and Otienoh, R., 2015. Teachers Attitude on Inclusive Education and Learners with Disabilities in Kisumu County, Kenya.
- Pears, K.C., Kim, H.K., Healey, C.V., Yoerger, K. and Fisher, P.A., 2015. Improving child self-regulation and parenting in families of pre-kindergarten children with developmental disabilities and behavioral difficulties. *Prevention Science*, 16(2), pp.222-232.
- Piper, B., Jepkemei, E., Kwayumba, D. and Kibukho, K., 2015. Kenya's ICT policy in practice: The effectiveness of tablets and e-readers in improving student outcomes. In *FIRE: Forum for International Research in Education* (Vol. 2, No. 1, p. 2).
- Radhakrishnan, D., DeBoer, J. and Kimani, S., 2018. Teachers as Guides: The role of teachers in the facilitation of technology-mediated learning in an alternative education setting in western Kenya.
- Schulte-Körne, G., 2016. Mental health problems in a school setting in children and adolescents. *Deutsches Ärzteblatt International*, 113(11), p.183.
- Seligman, M. and Darling, R.B., 2017. Ordinary families, special children: A systems approach to childhood disability. Guilford Publications.

Sellah, L., Vincent, M., Vivian, J., Brown, K., Bernadette, N. and Zigler, R., 2016. Situational Analysis and Development of Inclusive Education in Kenya and Tanzania. *Сибирский вестник специального образования*, (3), pp.55-65.

Sessional Paper No 10 (1965) on African Socialism

The National Special Needs Education Policy Framework in Kenya (2009)

Turnbull, A.P., 1995. *Exceptional lives: Special education in today's schools*. Merrill/Prentice Hall, Order Department, 200 Old Tappan Rd., Old Tappan, NJ 07675.

Wiener, J. and Tardif, C.Y., 2004. Social and emotional functioning of children with learning disabilities: does special education placement make a difference? *Learning Disabilities Research & Practice*, 19(1), pp.20-32.

World Conference on Special Needs Education, *Access and equality, the SALAMANCA Statement and Framework for Action on Special Needs Education* (Spain, June 1994)

Reports

Committee on Care and Rehabilitation of Disabled Persons (Government of Kenya, Mwendwa Report, 1964)

DFID, Department for International Development, "Realising human rights for poor people.", (Government of Kenya, 1997)

Hamm, B.I. 2001. "A human rights approach to development." *Human Rights Quarterly* 23:1005-1031,

Kenya National Survey for Persons with Disability Main Report, National Agency for Population and Development and Kenya National Bureau of Statistics, November 2008

National Special Needs Policy

Kenya National Commission on Human Rights *Objects of pity or individuals with rights: The right to education for children with disabilities*' (2007).

L.H. Piron, "Rights based Approaches and Bilateral Aid Agencies: More Than a Metaphor?" (IDS Bulletin 2005, 36:19-30.)

Republic of Kenya, "The National Special Needs Education Policy Framework, July 2009"

The Commission of Inquiry into the Education Systems of Kenya (Government of Kenya, The Koech Report, 1999)

The Kamunge Report (Government of Kenya, 1988)

The Kenya Education Commission (Government of Kenya, Ominde Report, 1964)

The National Committee on Educational Objectives and Policies (Government of Kenya, The Gachathi Report, 1976)

The Task Force on Special Needs Education (Government of Kenya, Kochung Report, 2003)

UNDP, United Nations Development Program. Human Development Report. New York, (Oxford University Press, 2000)

UNESCO, United Nations Educational, Scientific, and Cultural Organization. (2000)

UNESCO, UNICEF; A Human Rights-based Approach to Education for All (2007)

World Education Report, The Right to Education: Towards Education for All Throughout Life. Paris: (UNESCO, 2000)

Internet Sources

Kenya National Bureau of Statistics, Census 2009 Summary of Results; Persons with disability; Available at <https://www.knbs.or.ke/number-of-persons-with-disability/> accessed on 2nd December 2018.

Kenya National Bureau of Statistics, Census 2009 Summary of Results; Persons with disability; Available at <https://www.knbs.or.ke/number-of-persons-with-disability/>

Ministry of Information, Communications and Technology, ‘Government Officially Rolls out the Digital Literacy Programme in Schools’, 29 September 2016 <http://www.ict.go.ke/government-starts-distribution-of-1-2-digischool-devices-to-over-22-000-public-primary-schools/> accessed 6 June 2019.

National Institute of Child Health and Human Development,” What are the treatments to learning disabilities” Available at <https://www.nichd.nih.gov/health/topics/learning/conditioninfo/treatment>

National Joint Committee on Learning Disabilities, “Learning Disabilities: Issues on Definition. A Position Paper of the National Joint Committee on Learning Disabilities, January 30, 1981.” *Learning Disability Quarterly*, vol. 6, no. 1, 1983, pp. 42–44. *JSTOR*, JSTOR, www.jstor.org/stable/1510862;

National Joint Committee on Learning Disabilities; Implications for Policy regarding research and practice. Retrieved from www.Idonline.org/njcltd

Wanzala O., 'Education ministry abandons Uhuru's laptop project' *Nation Newspaper* 25

February 2019 <https://www.nation.co.ke/news/education/Ministry-abandons-laptop-project/2643604-4997644-10p9jfgz/index.html> accessed 6 June 2019;

Editorial, 'Of failed school laptop project and sobering lessons it offers, *Standard Digital* 26 February 2019

<https://www.standardmedia.co.ke/article/2001314435/of-failed-school-laptop-project-and-sobering-lessons-it-offers> accessed 6 June 2019.

Seth Meyers, "Empathy for Parents of Special Needs Children: Coping & Help"

(*Psychology Today* 2013) <https://www.psychologytoday.com/intl/blog/insight-is-2020/201310/empathy-parents-special-needs-children-coping-help>