

**THE RIGHT TO EDUCATION FOR CHILDREN IN CONFLICT SITUATION:
HOW RESPONSIVE IS KENYA?**

**THESIS SUBMITTED IN PARTIAL FULFILMENT OF THE REQUIREMENTS
FOR THE AWARD OF MASTER OF LAWS (LLM) DEGREE UNIVERSITY OF
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SUBMITTED BY: ALICE BITUTU MONG'ARE

REG NO. G62/79796/2012

SUPERVISOR: FELIX ODIMMASI

MAY 2015

DECLARATION

I declare that this is my original work done according to the requirements and regulations of the University of Nairobi for the degree of Master of Law (LLM)

Signed.....

Date:

ALICE BITUTU MIENCHA MONGARE

REGISTRATION NO: G62/79796/2012

Signed:

Date:.....

SUPERVISOR:

FELIX ODIMMASI

I certify that this thesis has been done under my supervision and according to the regulation and requirements of the University of Nairobi.

Signed:

Date:

MR FELIX ODIMMASI

LECTURER SCHOOL OF LAW

UNIVERSITY OF NAIROBI

NAIROBI, KENYA

DEDICATION

This Thesis is dedicated to my husband Peter Mongare Kingoina for encouraging me to go back to class. My children Valerie, Moses, Sandy, Sarah, Abby, Deborah, David. My niece Linnet, for their physical, emotional, financial, spiritual support and encouragement during this tiring but worthy journey. God willing may this mark the beginning of greater achievements for each one of you.

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The 2012-2013 Masters in Laws (LLM) class University of Nairobi (UON) Parklands, for the wonderful support through presentations in class as we contextualized them. Those ideas came in handy during my thesis writing. May God bless and sustain your lives as you realize your dreams.

ABSTRACT

Despite the importance of education there are approximately 72 million children out of school worldwide and more than half (37 million) live in conflict-affected and fragile states. Furthermore, an average of 750, 000 children have their education disrupted or halted due to humanitarian disasters each year. The right to quality education for children living in conflict affected regions has been greatly violated. It does not receive as much attention as other social economic rights.

In Kenya's arid and semi arid areas, where conflict has been persistent only 25% of children joining school complete their education and not within the stipulated period. The study established that most international treaties and conventions such as Universal Declaration of Human Rights (UDHR), International Covenant on Social Economic and Cultural Rights (ICSECR), The United Nations Conventions on Rights of a Child (CRC), Geneva Convention and its 3rd protocol among others, obligates state parties to promote, fulfill and protect the right to education. Kenya is a signatory to the above international legal instruments, and has integrated them into the constitution and enacted the Basic Education Act which generally protects right to education. It has however, not realized the right to education for children in conflict situation in terms of availability, accessibility, adaptability and acceptable quality education. Majority of the children in conflict situations have difficulties accessing their right to education due to lack of practicable legal strategies to address: poverty, child labour, out-dated cultural practices such as early marriages, FGM among others.

The sources of data were both secondary and primary, using mixed methods, questionnaires and interviews. A representative population of 165 was picked through random stratified sampling. The study integrated best interventions from Israel and South Africa. The recommendations are: Review of law and policies, employment of practical strategies in implementing the laws on the right to education, Judiciary to issue supervisory orders and purposive interpretation to issues. The research interrogates the international instruments and suggests approaches that fit the local situation in addressing the plight of children in conflict situations.

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LIST OF ABBREVIATIONS

ACHPR	African Charter on Human and People Rights
ACRWC	African Charter on the Rights and Welfare of the Child
CCDRE	Convention Concerning Discrimination in Respect of Employment and Occupation
CDE	Convention against Discrimination on Education
CEDAW	Convention on Elimination on All form of Discrimination Against Women
CKRC	Constitution of Kenya Review Commission
CRC	Convention on the Rights of the Child
EAA	Education Above All
ESCR	Economic Social and Cultural rights
EFA	Education for All
eKRL	Electronic Lenya Law Report
ERS	Economic Recovery Strategy
ESD	Education for Sustainable Development
FPE	Free Primary Education
FPEA	Free Primary Education for All
IAC	International Armed Conflict
ICCPR	International Convention on Civil and Political Rights
ICESCR	International Conservation on Economic Social and Cultural Rights
IDC	Internally Displaced Children
IHRL	International Humanitarian Right Law
IHL	International Humanitarian Law

ICL	International Criminal Law
IDP	Internally Displaced persons
ILO	International Labor Organization
INEE	Inter-Agency Network for Education in Emergencies
IRIN	Integrated Regional Information Networks
KESSP	Kenya Education Sector Support Programme
KNBS	Kenya National Bureau of Statistics
KLR	Kenya Law Reports
MDG	Millennium Development Goals
NIAC	Non International Armed Conflict
ODM	Orange Democratic Movement
OHCHR	Office of the United Nations High Commissioner for Human Rights
PNU	Party of National Unity
PRSP	Poverty Reduction Strategy paper
SSRN	Social Science Research Network
TEP	Teachers Emergency Pact
UDHR	Universal Declaration on Human Rights
UN	United Nations
UNICEF	United Nations Child Education Fund
UNHCR	United Nations High Commission for Refugees
UNESCO	United Nations Educational Scientific and Cultural Organization
UPE	Universal Primary Education
WMES	Welfare Monitoring and Evaluation Survey

LIST OF CONSTITUTION AND STATUTES

CONSTITUTIONS

Kenya

Constitution of Kenya, 2010

South Africa

Constitution of South Africa Act No. 108 1996

STATUTES

Kenya

Basic Education Act No. 14 of 2013

Children Act No. 8 of 2001

Israel

Compulsory Education Law Act 1949

Extended school Day and Enrichment Education Law 1997

Free Education to Sick Children 2001

Return Home Act 1948

School Meals Law 2005

State Education Act 1953

Special Education Law 1988

Students Rights Laws 2000

POLICY DOCUMENTS

Kenyan

Economic Recovery Strategy (ERS) 2003

Kenya's Vision 2030

Sessional Paper No.1 Of 2005on Policy Framework for Education, Training and Research.

South Africa

Department of education, National Norms and Standards for funding

Department of Education White Paper no.6 Building on Inclusive Education and Training Systems

National Commission on Special Needs in Education and Training (NCSNET)

Israel

New Horizon (Ojek Hadash) Commission report 2008

Oz la Temularah Commission report 2011

LIST OF INTERNATIONAL CONVENTIONS, TREATIES AND RESOLUTIONS

Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights. (1992)

Additional Protocol to the Geneva Conventions Article 1of 12 August 1949 and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977

Additional Protocol II to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), 8 June 1977, Article 5(3)(a)

African Charter on Human and People's Rights.

American Declaration on the Rights and Duties of Man Article 12

Convention on Economic Social and Civil rights Committee General Comment No 13- Right to Education (1999)

Convention on Elimination of Discrimination Against Women. (1979)

Covenant against Discrimination in Education 1960

European Convention on the Legal Status of Migrant Workers (1977),

Framework Convention for the Protection of National Minorities. (1995).

International Covenant on Civil and Political Rights 1966

International Covenant on Economic, Social and Cultural Rights,(1976)

Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Charter on Human and Peoples' Rights, AHG Res. 230(XXX)(1998/2004)

The Geneva Convention (III) relative to the Treatment of Prisoners of War. The convention is particular to the detained persons and the main obligated power is the detaining power

UNESCO: Convention Against Discrimination in Education.

Universal Declaration of Human Rights, (1948)

LIST OF CASES

1. Coalition for Reform & Democracy (CORD), Kenya National Human Rights & Samwel Njuguna Nganga v Republic & Another (2015) eKRL
2. Diana Ndiele Wambua (Civil Cause no.30 of 2003) [2003] eKLR
3. Eric Gitari v Non-Governmental Organizations Co-ordination Board & 4 Others [2015] eKLR
4. Institute of Social Accountability & Another Vs National Assembly & 4 Others 2015 eKRL

5. John Mbatia Kibebo and Another v Eliud Kibebo Mbatia, Civil case 169 of (2008) [2013] eKLR.
6. Michael Mutinda Mutemi v Permanent Secretary Ministry of Education and Two others[2013] eKRL
7. Njuguna Nganga vRepublic & Another [2015] eKRL
8. Satrose Ayuma and 11 Others v Registered Trustees of Kenya Railways Staff Retirement Benefits Scheme and 3 Others, High Court At Nairobi, Constitutional and Judicial Review Division, Petition No.65 of 2010 [2010] eKLR
9. Teachers Service Commission v Kenya National Union of Teachers (Petition No.22 of 2013[2013] eKLR and Petition No. 23of 2013 [2013] eKLR

International Cases

10. Autism-Europe v France, complaint No. 13/2002, 7 November 2003, para 52.
11. City of Cape Town v. Rudolph, 2004 5SA39 (C), 74H-75J
12. Du Plessis v. De Klerk 1996 5 BCLR 658(CC)
13. Grootboom v. Oostenberg Municipality and Others 2000 (3) BCLR 293 A
14. Jehovah Witnesses, Inter African Union for Human Rights v Zaire
15. Matukane and Others v Laerskool Potgietersrus,
16. Plommin v. Minister of Defense, [1997] F.H.CR 7048 of 1997 pp 84 (1) 721
17. Supreme Follow up Committee on Israel Arab Education v. Minister of Education, HC 2814 of 1997 [2000] PHD 84 (3) 233
18. Unni Krishnan and Ors V State of Andra Pradesh and Ors 1993
19. Valasquez Rodriguez Case, Judgment of July 29, 1988, Inter-Am Ct. H.R. (Ser. C) No.4
20. World Organization Against Torture, Lawyers' Committee for Human Rights.

CHAPTER ONE

1.0 INTRODUCTION AND BACKGROUND TO THE STUDY

*“In the midst of conflict, education can be both life-sustaining and life-saving. It is the basic right of every girl and every boy, vital for their enjoyment of all other human rights and critical to the future of any society”.*¹

The importance of the right to education as a fundamental basic human right world over and especially for the vulnerable children, in society is emphasized under the international, regional² and domestic³ legal documents. It promotes individual freedoms and enables participation in democratic processes.⁴ Education is a social tool that can equip children to participate in social economic activities of their country.⁵ Kenya has ratified the international instruments, hence shown its commitment to ensuring access to appropriate education.⁶

¹Vernor Munoz, Report of the Special Rapporteur on the right to education: *Right to education in emergency situations*, Doc. A/HRC/8/10, 20 May 2008 para 107. (Report of Special Rapporteur Education 2008) <www.right-to-education.org/sites/r2e.gn.apc.org/files/Emmergencies%202008.pdf> Accessed 1 February 2013.

²Article 28, UN Convention on the Rights of the Child, 1577 U.N.T.S 3 adopted on 20 November 1989 (entry in force 2 September 1990); Article 13, International Covenant on civil and political Rights, 999 U.N.T.S 171, adopted on 16 December 1966 entry into force 23 March 1976; Article 26 The Universal Declaration of Human Rights, G.A res 217a (111) (1948); UNESCO Convention against Discrimination in Education 429 of all forms of Discrimination against women, 1249 U.N.T.S 13, adopted on 18 December 1979 (entry into force 3 September 1981); The millennium Development Goals, June 2011; The Dakar Framework for action (2000) on Education for All; Article 27, The African Charter on Human and Peoples' Rights, CBA/LEG/67/3 rev.5, adopted on 27 June 1981 (entered into force 21 October 1986); Article 11, The African Charter on the Rights and Welfare of the Child, OAU Doc. CAB/LEG/24.9/49, adopted in 1990 (entered into force 29 November 1999).

³Kenya Sessional Paper No. 1 of 2005 on Education and training; Kenya Education Sector Support Programme (KESSP); Ministry of Education's Strategic plan; Kenya's EFA plan of Action.

⁴UNESCO, 'The Right to Education' available at <http://www.unesco.org/new/en/education/leading-the-international-agenda/right-to-education>, (accessed 26 November 2014).

⁵Benard A K, *The Child Friendly School: A Summary* (UNISEF: New York, 1999) 2.

⁶Article 2 (5) (6), Constitution of Kenya 2010: The general Rule of international law shall form part of Kenya under this Constitution.

Despite the emphasis and importance placed on education there are approximately 72 million children out of school worldwide.⁷ More than half (37 million) live in conflict-affected and fragile states.⁸ Moreover, an average of 750, 000 children have their education disrupted or halted due to humanitarian disasters each year.⁹ Out of the 37 million children out of school worldwide due to conflict, Kenya contributes on average annually to about 38000 to the above number. This is due to increase in conflict especially in arid and semi arid areas of Mandera, Wajir, Tana River, Semikaro, Lamu and Turkana among others.¹⁰ Notably, More than 25% of pupils joining school in the said areas do drop out before completion.

Between the months of November 2011 and October 2012, due to violence in Moyale and Tana Delta, 6000 pupils' education was interrupted.¹¹ During 2014 national examination period, in Turkana's Kapedo area, 5000 pupils' education was interrupted.¹² This is a threat to the realization of the country's vision 2030, whose success majorly depends on education.¹³ These figures are alarming especially with the continuous increase in armed conflicts.

1.1 Nature of Education

Education comprises all deliberate and systematic activities designed to meet learning needs.¹⁴ It entails all educational levels from pre-primary through university, adult, form a

⁷Save The Children Alliance, Delivering Education for children In Emergencies: A Key Building Block for the Future, international Save The Children Alliance 1<www.save the children .net/alliance>accessed 1February 2014.

⁸ibid.

⁹ibid.

¹⁰Kenya emergency Humanitarian Response Plan 2013 available at <http://unocha.org/cap/> accessed 20 august 2014S

¹¹ibid

¹²ibid

¹³Muthaka & Wangombe, High level school dropout threaten Vision 2030 goal<reliefweb.int/sites/---/KEN-Education-LRA-Analysis>2February 2013.

¹⁴Kristin Hausler, Nicole Urban and Robert McCorquodale, *Protecting Education in Insecurity and Armed Conflict: An International Law Handbook* (British Institute of International and Comparative Law) 4<

land non formal education.¹⁵ Ideally it involves accessibility, availability, acceptability and adaptability.¹⁶ Education strategically enables the beneficiaries to realize other rights and freedoms.¹⁷ It is classified as a socio-economic right and is progressively realizable.¹⁸ Rights are a child of the law and states have an obligation to enact legislation and put in place implementation mechanisms to enable realization of the rights by the holders.¹⁹ Thus realization of this positive right depends on state commitment towards the children in conflict situations.

The Constitution recognizes this right and generally obligates the state to protect, promote and fulfill it. It however, does not explain what obligation to “fulfill” entails towards children in conflict situations.²⁰ It is thus safe to state that amid the conflict on implementation of the right to education, it is the courts to decide when and where state’s obligation, based on progressive realization, begins. The challenge is that the Bill of Rights is a juvenile law and not many cases have been brought to court on the same. Despite the Kenyan Constitution declaring, the right to education as compulsory and free,²¹ its access is quite a challenge to minority groups particularly those marginalized by conflict.²²

www.educationabove all.org/legal resources> accessed 10 July 2013.

¹⁵ibid

¹⁶ibid page 5.

¹⁷Hausler, Urban and McCorquodale (n14).

¹⁸ Viriava Fon and Coomans Fon, ‘The Right to Education’ in Brand D and Heyns C, Socio-Economic Rights in South Africa (Pretoria University Press:Pretoria, 2005) at 57.

¹⁹Jeremy Betham. <<http://www.princeton.edu>> accessed 28 August 2014.

²⁰Article 21, Constitution of Kenya, 2010.

²¹Ibid, Article 53 (1).

²²For instance, in Uganda, it has been noted that society is not ready to accept the child soldiers who have reformed (see Saturday Nation newspaper 28th December 2013 page 12). These children have a right to be educated just like any other child despite having participated or been affected by conflict.

Notably, the focus has shifted from making education available to having quality education.²³ Notwithstanding the high standards alluded to education, what has been over looked is that during national humanitarian disasters, education is not even available.²⁴ Consequently too many children in conflict face the injustice and or violation of their rights including education.²⁵ It is viewed as a luxury.²⁶

Worse still, during humanitarian response education is not considered by both national governments and the International community, as one of the vital needs of the children. *The scenario was witnessed in Kenya, after the 2007/2008²⁷ post election violence over disputed presidential elections.*²⁸ Subsequently, It recurred in the local tribal clashes in the Tana River delta between the Orma tribe (agriculturalists) and the Pokomo tribe (Pastoralists).²⁹ These children were alienated from the learning centers and exposed to illiteracy and other adverse effects of conflict.³⁰

This is despite the constitutional commitment obligating the state to ensure availability of the right to education. Unfortunately, the right to education due to its peculiarity does not dictate whether, when, how and what will be availed or accessed. Resultantly children from a moderate family income will easily access the right while children in conflict situations have had difficulties since time immemorial accessing their right to education. The fate of the

²³Ministry of Education Science and Technology, Policy Framework for Education, Training and Research Meeting the challenges of Education, training and research in Kenya, Session paper no.1 of 2005.

²⁴UNESCO: Building Peace in the Minds of Men and Women <www.Unesco.Org/new/en/Unesco/themes> accessed 7 June 2014.

²⁵Edwin Abuya and Charles Ikobe, 'Wasted Lives: Internally Displaced Persons Living in Camps in Kenya' (2010) 1International Humanitarian Legal Studies 1,4

²⁶Sara Nicolai and Carl Triplehorn, 'The role of education in protecting children in conflict' (march 2003) <[http:// www.odi.org.uk/368-role-education-protecting-children-conflict.](http://www.odi.org.uk/368-role-education-protecting-children-conflict)> accessed 7 July 2014.

²⁷<<http://www.internallydisplacement.org/countries/Kenya>> accessed 20 September 2014.

²⁸Edwin Abuya 'Consequences of a flawed Presidential Election' (2009) 29 Northwestern Journal of International Human Rights Legal studies 127, 128.

²⁹IRIN 'Dozens Killed in Tana River Clashes' <www.irinnews.org/report/kenya-dozens-killed-in-tana-river-clashes> accessed 20 September 2014

³⁰IRIN, 'Insecurity Conflict Affect Education in Northern Region' <<http://www.irinnews.org/report/73834/Kenya-insecurity-conflict-affect-education-in-northern-region>>accessed 10 June 2014.

children in conflict hence remains at the discretion of the courts. However, not many human rights cases have gone to court on this concept, hence justifying this study.

This challenge has been caused by conflict which makes most children impoverished orphans after the loss of parents and property. Insecurity is eminent due to long walking distance to the only available schools. Curriculum issues, lack of fees, language, uniform, gender issues, and lack of particulate legal direction among others inhibit their ability to enjoy this very basic right.³¹The study established that the Kenyan institutional structures are accustomed to diverting resources meant for the vulnerable to children who are able to meet their educational needs.

The study examined the prospects and status of realizing the right to education for children in conflict situations at all levels of schooling. The scope was dictated by the definition of a child, according to the Convention on the Rights of the Child (CRC)³² and the African Charter on the Rights and the Welfare of the Child (ACRWC)³³ as any human being below the age of 18 years. Similar views are held under Kenyan laws.³⁴An analysis of gaps in the current legal and policy framework at international, regional and national levels and challenges inhibiting actualization of the right to education for children in conflict was done. This is benchmarked against the best interventions seen in Israel and South Africa. The two countries were chosen because besides being Commonwealth countries both have had conflict and emerged successful in protecting the right to education for the vulnerable through their constitutions and other legislations.

³¹Abuya and Ikobe, (n 25) 3

³²Convention on the Rights of the Child, Article 2.

³³African Charter on the Right and Welfare of the child, Article 2, 3 RADIC (1991) 173.

³⁴The constitution of Kenya 2010, Article 260 : Kenyan Children Act, section2.

1.2 Background to the Problem

The right to Education has long been neglected in emergency relief efforts³⁵ despite its importance to future generations.³⁶ Historically, it has been viewed as a developmental duty having little to contribute to the basic survival and security of internally displaced children (IDC).³⁷ As a result, funding for education is typically a much lower priority in humanitarian emergencies.³⁸

Conflict-affected countries more often than not are the furthest from reaching the Millennium Development Goals (MDGs) in the post 2015 period.³⁹ This is because children in conflict zones are routinely denied the transformative effects that quality education brings.⁴⁰ Education is a human right that demands fulfillment even in situations of danger. It is also what children and parents should consistently ask for even at the height of crisis.⁴¹

1.2.1 History on the Right to Education under International Law

The socio-economic rights are recent in international human rights law. After the Second

³⁵Jo Boyden & Paul Ryder, *Implementing the right to Education in areas of Armed Conflict* (Department of International Development University of Oxford, 1996), 10 <www.essex.ac.uk/arnedcon/story-id/implementrighteduarearmedcon.pdf> accessed 7 June 2013.

³⁶India, National Commission for, Protection of Child Rights observation <<http://zeenews.india.com/news/nation/education-can-protect-children-in-conflict-zones-ncpcr554924.html>> accessed 10 February 2013.

³⁷Inter-Agency Network for Education in Emergencies, 'Global consultation-bridging the gaps: Risk Reduction, Relief and Recovery' <<http://www.reliefweb.int/rw/lib.nsf/db900sid/OCHA-7TGQUA/&file/inee-gc-2009-report-final.pdf?openelement>> accessed 1 February 2013.

³⁸Anna Azaryeva . 'Beyond School Books-A podcast series on education in emergencies' (New York 10 march 2011) <http://www.unicef.org/education/index_57887.html> accessed 10 June 2013.

³⁹War Child International, 'What is War Child doing?' <<http://www.warchild.org.uk/features/this-textbook-could-save-your-life>> accessed 7 June 2014.

⁴⁰Ibid.

⁴¹IRIN, 'Education tops pastoralists concerns' <<http://www.irinnews.org/report/73156/africa-education-tops-pastoralists-concerns>> accessed 7 July 2014.

World War, the United Nations Charter was signed in San Francisco at the conclusion of the world organization conference in 1948.⁴² Its major objectives were to solve all socio-economic cultural rights, promote human rights and fundamental freedoms. The UN charter did not expressly mention right to education, however Article 55 widely deals with promotion of right to education and other socio-economic rights.⁴³ The right to free and compulsory education was first recognized in the 1948 Universal Declaration of Human Rights (UDHR).⁴⁴ Subsequently, the 1989 Right of the Child (CRC) which translated the needs of 96% of countries in the world to their education followed, and the 1990 world summit for children and World Education Conference held in Jomtien (Thailand).

The UDHR served as a foundation for two binding UN human rights instruments, International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) 1966.⁴⁵ The ICESCR entered into force on 3rd 1976 as a UN treaty and has received world recognition. Kenya ratified ICESCR in 1992 hence acquiring an obligation to promote, protect and fulfill socio-economic and cultural rights. Further, the covenant stipulates that dignity be accorded through education. It shall be directed to development of human personality, dignity and strengthens human rights and fundamental freedoms.⁴⁶ The 3rd protocol to Geneva Convention also protects the right to education for children in conflict.

⁴²Steiner J, Alston P and Goodman R, International Human Rights in Context: law, Politics, Morals (Oxford University Press: Oxford, 3rd ed,(2007) at 242.

⁴³Articles, 1 &55 UN Charter.

⁴⁴Universal Declaration on Human Rights, Article 26.

⁴⁵See Articles 13 and 14.

⁴⁶Ibid Article 13.

1.2.2 History of Regional Legal Instruments on the Right to Education

The American Convention on Human Rights came into force in 1969⁴⁷ with only one article talking about education. Hence the American Additional Protocol came into force and focused solely on social economic rights. The European Convention on protection of human rights was enacted but had no provision for socio-economic rights⁴⁸

In Africa, the Banjul Charter on Human and Peoples' rights⁴⁹ at its preamble clearly shows that one cannot divorce the socio-economic rights from civil and political rights. Thus education guarantees enjoyment of civil and political rights.⁵⁰ In accessing equal opportunities, the Charter advocates for right to education and training.⁵¹ It also acknowledges that every child has a right to education even though most African children rights are yet to be realized due to their environment.⁵² The African Charter on Rights of the Child recognized that children require mental care, physical, moral development and health if they are to realize their physical and mental needs.⁵³ Therefore, conclusively, the charter recognized the importance of socio-economic rights and every child's right to education. Following the provisions under international and regional instruments, a greater part of the

⁴⁷American Convention on Human Rights adopted in San Jose Costa Rica on 22 November 1969, O.A.S. Treaty series no.3 (entered into force on 18 July 1978) after the eleventh instrument of ratification (that of Grenada) was deposited.

⁴⁸European Convention for protection of Human Rights and Fundamental Freedoms, as amended by protocols Nos. 11 and 14, was signed in Rome on 4 November 1950 (entered into force on 3 September 1953).

⁴⁹African (Banjul) Charter on Human and People's Rights, adopted 27 June 1981, OAU Doc. CAB/LEG/67/3 rev. 5, (entered into force 21 Oct 1986).

⁵⁰Theoha M E, Realizing the Rights to Education in Lesotho (University of Pretoria: Unpublished LLM Thesis, 2011) 11

⁵¹Article 12, the Protocol to the African Charter on Human and People's Rights on the Right of Women in Africa.

⁵²Theoha M E, (n50).

⁵³Article 11 of the African Charter on the Rights and welfare of the Child.

international community has acknowledged the importance of education, ratified the instruments and put in place laws to ensure that everyone could enjoy this right.⁵⁴

1.2.3 Historical Development on the Right to Education in Kenya

During the pre-colonial period there existed informal education where each member of society was obligated to impart basic knowledge to the children.⁵⁵ The curriculum essentially entailed passing skills based on gender.⁵⁶ At colonial times there was no free primary education for Africans. Formal education was brought by missionaries as a way of spreading the gospel. It was given alongside skills such as carpentry, cookery and gardening around the missionary houses.⁵⁷ Subsequently, schooling was introduced with Africans, Asians and Europeans having different curricula.⁵⁸ Since attaining its independence in 1963, the government and the people of Kenya have been committed to expanding the education system to enable greater participation by Kenyans in social, economic and cultural rights. This has been in response to a number of concerns, some of them being, the desire by the government to combat ignorance, diseases and poverty.⁵⁹ Further, every Kenyan child has the right of access to basic welfare provisions, including education. The efforts to expand educational opportunities have been reflected in the various policy documents

⁵⁴International Convention on Social Economic and Cultural Rights (ICESCR) Articles 13&14: African Charter on the Human Rights the People (ACHPR)Article 17: Convention on the Right of the Child(CRC) Articles 28&29 and African Charter on the Right and Welfare of the Child(ACRWC)Article 11.

⁵⁵Amukowa W, 'A call to reform Secondary schools in Kenya', (2013) 3 (1) American International Journal of Contemporary Research, 197.

⁵⁶ibid

⁵⁷Wosyanju C, The system of education in Kenya, available at<[http://www.International.iupui.edu/Kenya/resources/Education in Kenya pdf](http://www.International.iupui.edu/Kenya/resources/Education%20in%20Kenya.pdf)>18 September 2013.

⁵⁸ibid

⁵⁹Daniel Sifuna, *The Illusion of Universal Free Primary Education In Kenya*. <<http://www.google.com/#q=the+illusion+of+free+primary+education+in+Kenya>> accessed 20 September 2013 and further articulated in *The Vision 2030, The Popular Version* <[http://chet.org.za/manual/media/files/chethernana docs/Kenya/National/Kenya%20Vision%2030 Popular%20 version.pdf](http://chet.org.za/manual/media/files/chethernana%20docs/Kenya/National/Kenya%20Vision%2030%20Popular%20version.pdf)> accessed 1 February 2013.

and⁶⁰ development plans.⁶¹ The importance of education, as comprehended by the founders of the nation was envisaged by the lobby to make it legally enforceable and entered human rights jurisprudence.⁶²

Additionally, the Kenyan government has addressed challenges facing the education sector through committees, commissions, taskforces and working parties.⁶³ The major ones include: Kenya Education Commission (Ominde Report of 1964),⁶⁴ the National Committee on Educational Objectives and Policies (Gachathi Report of 1976),⁶⁵ the Taskforce on the Implementation of Free Primary Education in Kenya by (Eddah Gachukia Committee of 2003) followed; the Kamunge 11 Taskforce (2008/2009) reviewed education sector laws.⁶⁶ Kenya's Sessional Paper No.1 of 2005⁶⁷ acknowledged the heavy public support required for basic education and the need to incorporate private sector in the provision and expansion of education at all levels by adopting education for all policy (EFA).⁶⁸

This is crowned by the promulgation the Constitution of Kenya 2010 which provides for the right to education as a socio-economic right under the Bill of Rights and guarantees basic education for all.⁶⁹ It obligates the state to provide free and compulsory basic education. Further, the Kenyan Government is to take measures to provide education for the

⁶⁰Nick Nyaga, 'History of Education in Kenya' <<http://booksbuildhope.wordpress.com/2009/10/16/the-history-of-education-in-kenya/>> accessed 20 February 2013.

⁶¹Okwach & Abagi 'Education for the next millennium' in P Kimunya, M Wagacha and O Okwach (eds) *Kenya's strategic policies for the 21st Century: macroeconomic and sectoral choices* (Institute of Policy Analysis and Research, 1999).

⁶²Nyaga (n60)

⁶³Ministry of Education Science and Technology (n23)1.

⁶⁴Anthony Wanjohi, 'Development of Education System in Kenya since Independence' <<http://www.kenpro.org/papers/education-system-kenya-independence.htm>> accessed 20 February 2013.

⁶⁵Republic of Kenya, Report of the National Committee on Educational Objectives and Policies, Nairobi: Government Printers,6-7.

⁶⁶Okwach A, (n59)

⁶⁷Ministry of Science Education and Technology, Kenya Session Paper No. 1 of 2005 (n 18) 90.

⁶⁸ibid

⁶⁹Article 43(a-f) Constitution of Kenya 2010.

marginalized and disadvantaged in society.⁷⁰ The constitution apportions education duties between National and county governments.⁷¹ The government and parents have a duty to avail the right to education, protect each child from child labor and armed conflict.⁷² The Basic Education Act, of 2013 obligates parents and the state through the cabinet secretary responsible for education to provide basic compulsory education for all children.⁷³

1.3 Statement of the Problem

The children in conflict situation in Kenya are finding it increasingly difficult to access their right to education. This is despite Kenya having afforded the right to education a three tier recognition as a right not as an appeal to charity, through the domestic regime (Constitution): regional regime: (African human rights system), globally:(United Nations System).⁷⁴ The study was informed that the laws, policies and practice have remained in books,⁷⁵ without practical strategies of implementation to transform them to reality in favour of children in conflict; hence they are of no consequence in these children's lives.

1.4 Objective of the Research

The main objective of the study is to determine, the extent to which the children in conflict situation access their right to education. It will suggest practical strategies that will lead to realization of the right to education for children in conflict situations.

⁷⁰ The Constitution of Kenya 2010, Articles 53(1)(b),54,55,56,201 and 237.

⁷¹ 4th Schedule Part 1(15), (16) and Part 2 (9), Constitution of Kenya 2010.

⁷² Children Act, section 7 and 10.

⁷³ Basic Education Act 2013, sections 39 and 40.

⁷⁴ The Constitution 2010, Article 43 and 53

⁷⁵ Abuya and Ikobe

1.4.1 Specific Objectives of the Study

- 1) To determine the extent to which Kenyan legal framework facilitates accessibility to the right to education for children in conflict situations.
- 2) To establish the barriers to access to the right to education for children in conflict situations in Kenya.
- 3) To establish the interventions employed elsewhere that Kenya can emulate in realizing right to education for children in conflict situations.

1.5 Research Questions

- 1) To what extent does the Kenyan legal framework facilitates access to the right to education for children in conflict situations?
- 2) What bars access to the right to education for children in conflict situations in Kenya?
- 3) Are there interventions employed elsewhere that Kenya can emulate to realize right to education for children in conflict situations?

1.5.1 Hypotheses

The study makes key assumptions that are tested through primary and secondary data:

1. It is the state's obligation to provide, protect, respect and fulfill the right to education.
2. Kenyan children in conflict situation may not enjoy the right to education just because the constitution provides so.
3. Implementation interventions on the right to education are inadequate.

1.6 Theoretical Frame Work

Three key theories are examined in light of the theme: Distributive justice, corrective theories and Positivist law theory.

1.6.1 Distributive Justice Theory and Corrective Theory.

The Distributive Justice theory by John Rawls argues that for fairness, justice and equitable distribution of benefits and burdens, states need to step in to regulate institutions and give a practical approach to the law. Otherwise the vulnerable in society will be forgotten in the basic provisions.⁷⁶ The benefits and burdens include education, shelter, health care, economic wealth, political power and work obligations that every state should by use of the law examine through the lens of justice.⁷⁷ Unequal distribution can only be entertained, if it will benefit the least advantaged in society like the children in conflict situations.⁷⁸ Arguably to achieve accessibility to social, economic and cultural rights, states should employ positive and deliberate interventions such as affirmative action.⁷⁹

Affirmative action justifies positive discrimination of lifting the disadvantaged in society and placing them in a position where they can compete with the advantaged in society.⁸⁰ The affirmative action originates from libertarians who believe that state function is to redistribute

⁷⁶ John Rawls, *A Theory of Justice*, (Becknap press of Havard University Press 1971).
<[www.ohio.edu/people/pic card/entropy/rawls.html](http://www.ohio.edu/people/pic%20card/entropy/rawls.html)> accessed 10 September 2014

⁷⁷ Ibid

⁷⁸ Rawls, (n76).

⁷⁹ ibid

⁸⁰ M Coetzee and M Bezuidenhout, 'The Fairness of Affirmative Action: In the Eye of the Beholder' (2011) 15 (2) South Africa Business Review 75 <www.ajol.info/index.php/sabr/article/download/76400/66858> accessed 10 September 2013.

resources and avoid the situation where less fortunate remain disadvantaged such as people involved in conflict.⁸¹ Distributive justice theory is based on utilitarianism philosophy that takes into consideration three patterns, need identification, equality and utility when determining a situation⁸². Institutions ought to come up with interventions that will ensure equal access to rights, by distribution of resources to protect the least advantaged, and hence maximize happiness for the greatest number in society.⁸³ The philosophy supports right to education for children in conflict since it argues that no member of society should live in deprivation.

Further, in support of the above position is the Corrective Justice Theory. The theory argues that, for fairness resources ought to be redistributed to restore the victims to the position where they ought to have been absence of conflict.⁸⁴ In human rights discourse it is the state that bears the primary duty to avail human rights, by correcting a situation that is as a result of its omission or commission. Justice hence entails under this theory that the state facilitates the right to education through the law, during conflict, flight or as soon as possible to enable victims recover lost time and contribute positively to society.⁸⁵ The question is can the facilitation by the state to right to education be fulfilled without written law to that effect? That brings us to need for another theory to fill in that gap and in this case, the positivist law theory comes in.

⁸¹Magdalena Sepulveda, *The Nature of the Obligations under the International Convention on Economic Social and Cultural rights* (Intersentia2003) 178.

⁸² Michael Sandel J., *Liberalism and the limits of justice*, Cambridge University at p. 16.

⁸³ Coetzee and Bezuidenhout (n 78)

⁸⁴ Corrective Justice, www.ucc.i.e/law//restitution/cj.htm>accessed 10 September 2014.

⁸⁵United Nations, *The impact of armed Conflict: Report of expert for Secretary to the General Assembly submitted for Graca Machel A/RES/48/157 5th session of UN General Assembly Advance copy at para184.*

1.6.2 The Positivist Theory

The Positivist theory emphasizes on encoded law as is or not as ought to be. According to Jeremy Bentham a renowned proponent of Positivist school of thought, he posits that a right is a child of the law and laws have to be enacted with strategies of implementation put in place if rights are to be realized⁸⁶ State needs to do more than having laws generally in place. The Constitution of Kenya as the “*Grundnorm*” provides for equality before the law and particularly protection of the minority and marginalized groups.⁸⁷ Thus, interpreted at face value the constitution and other legislation on education⁸⁸ simply speak of right to education for all but lack specific implementation mechanisms to ensure displaced children access the right to education. The implementation mechanisms support distributive justice theory and can only be meaningful to lives of these children if they are written.

Legally speaking, states are seen as the custodians of rights while citizens are beneficiaries. Rights are not granted by the state but belong to the citizens.⁸⁹ The state owes children in conflict other obligations other than documentation that the right to education is available for them.⁹⁰ This entails political will to enforce rights, practically, individually and universally. The children in conflict should not be seen begging for their rights. They should demand as of right and have recourse in case of breach.

Social economic rights, in which category right to education falls under, are categorized as second generation rights. Despite these rights being positive rights, requiring the government

⁸⁶Bentham J, (1781), *Introduction to the Principles of Morals and Legislation*, University of Oxford.

⁸⁷The Constitution of Kenya 2010, Article 27, 42 and 256.

⁸⁸Basic Education Act 2013 : Children Act 2001.

⁸⁹The Constitution of Kenya 2010, Article 19 (3) (a)

⁹⁰Heiken L, *Age of Rights* (Columbia University Press: New York, 1990) 7.

to do something to enable realization, the Kenyan government hides behind progressive realization.⁹¹ This curtails effective implementation of right to education in favor of these children, as a vulnerable group.

1.7 Literature Review

Introduction

Personal and Intellectual development depends on education. Despite this vital role of education, the literature on right to education for children in conflict situation in terms of protection, enforcement and fulfillment of the right is lacking. Thus, the researcher had to majorly rely on international writings whose circumstances are more developed than Kenyan. The study hopes to fill in some of the gaps noted in analyzing the challenges faced by children in conflict situation in accessing their right to education. Education is an enabling right which children in conflict situation can use to demand for government action in fulfilling its obligation.⁹² The right to education can only be meaningful to these children if it is accessible and available.⁹³ The Literature will be guided under three themes:

- 1) Legal Framework on Accessing the Right to Education in Conflict Situation.
- 2) Barriers to Access to the Right to Education for Children in Conflict Situation.
- 3) Realizing the Right to Education in Conflict, through Responsiveness and Implementation Strategies.

⁹¹ibid

⁹²Hausler, Urban & Mcquondale (n14)

⁹³Committee on Economic, Social and Cultural Rights, General Comment13, The right to education (Twenty-first session, 1999), U.N. Doc. E/C.12/1999/10(1999).

1.7.1 Legal Framework on Accessing the Right to Education in Conflict Situation.

Access to basic education is a minimum requirement that every Kenyan child must get for progressive existence and participation in decision making in society.⁹⁴ Although a constitutional entitlement, the right to education is not available to all persons due to some disadvantages beyond the beneficiaries. Under these circumstances, it becomes necessary for thorough and justified policy formulation and practical strategies to enforce the spirit of the law in Articles 43 (1) (f) and 53 (1) (b) as read with Article 27 (6) of the Kenyan Constitution 2010. Such policies have to provide a clear justification for favoring each category of disadvantaged persons.

Bamforth Malik and O’Cinneide, highlight the guiding principles for regulating discrimination law.⁹⁵ Their main attention is ‘equality’ but they emphasize on social inclusion, procedural justice and autonomy. The theories and concepts of equality are explained at length in an attempt to justify legal intervention.⁹⁶ The study at hand, borders along similar lines with the book in that it is determining the extent to which the Kenyan government is facilitating accessibility to the right to education for children in conflict situations. The book however deals with discrimination generally.

In the same breath Mills argues that, at one level any liberal, political and legal system needs to be able to ‘justify’ legal interventions that could have a potential impact on the liberty of individuals. At this most basic level, a precept such as Mills requires that the only

⁹⁴Achoka J S K, ‘Accessing to Basic Education in Kenya: Inherent Concerns,’ (2007) 2 (10) Educational Research and Review at 1.

⁹⁵Bamforth N, Malik & O’Cinneide, *Discrimination Law: Theory and Context* (1st Ed, Sweet and Maxwell, London 2008).

⁹⁶*ibid.*

justification for an interference with the liberty of another is to prevent harm to others.⁹⁷Mills' book differs from this study because it is addressing legal intervention to avail liberty to those are deprived of it yet it is their entitlement. The relevance to the study is that both studies are advocating for human rights and equality before the law. Education can only be curtailed if it hurts others. It is the argument of the study that with education children in conflict will be empowered to realize other rights like mills liberty right.

Positive action is very significant in the concept of anti discrimination law and is closely connected to two main questions: that is, how wide is the protection against discrimination and when can forms of apparent discrimination be justified for policy reasons? This book in collaboration with other books, attempts to elaborately demystify the concepts of equality and social inclusion at length.⁹⁸The children in conflict are not enjoying the right to education because their plight is overlooked during the formulation and implementation of education strategies and policies. In line with Rawls distributive justice theory, the state ought to step in and ensure that the right to education for children in conflict situations is not curtailed.

Hugh Collins argues that equal treatment is very important in anti-discrimination law. This is because it is the normal rule required by the separate principle of respect for individual dignity or equal worth. This is also provided for in some international instruments guaranteeing equal rights such as European Union Convention and Protection for Human rights and Fundamental freedoms (EUCPHRFF) and UDHR.⁹⁹ This principle has played a key role in western constitutional legal systems in liberalizing the systems to respond to the demands of its citizens. Likewise, what the writer is addressing is discrimination in all forms.

⁹⁷John Stuart Mill, *liberty and other writings* (Cambridge University Press, 1989), Chapter 4.

⁹⁸Hugh Collins, 'Discrimination Equality and Social Inclusion' (2003) 66 (1) M.L.R 16.

⁹⁹The European Union Convention for the protection of Human Rights and Fundamental Freedoms, at Article 4.

While the themes sought to be achieved by both studies are similar, that is equal treatment before the law and lifting the disadvantaged in society through positive action, the study at hand will be seeking to specifically elevate the dignity of children in conflict situation through access to right to education.

According to Jacqueline Kirk too many children living in conflict affected areas face the injustice of being denied their right to education. The book outlines challenges of delivering quality education and indicates that empirically there are about 39 million out of school children from conflict affected states. The cases are diversely drawn from Afghanistan, Uganda, Sierra Leone and Rwanda among others. A review of policies and approaches taken by those offering assistance to deliver education is given.¹⁰⁰The research at hand, though almost similar to the article herein will practically look at the legislative responsiveness of the Kenyan government in addressing the education challenges facing children in conflict, in Burnt Forest(IDP) Camp of Eldoret, Mt Elgon and Tana River Semikaro arid and semi arid areas of Kenya.

Jo Boyden and Paul Ryder also examine the implementation of the right to education in areas of armed conflict. Their study reveals that education in conflict situations receives lesser attention mainly due to limited funding.¹⁰¹ The study reveals the important role of NGO's in ensuring that the gap faced in access to education in conflict situation including training teachers and providing them with the necessary learning kits. The role is hailed, but are the children in conflict situations going to wait for well wishers to drop by to achieve their rights? That is not what John Rawls envisions in distributive justice theory. The state should

¹⁰⁰Save the children (n7).

¹⁰¹Boyden and Ryder, (n35).

step in through legal provisions, practicable approaches and take charge as the custodian of rights, and steer ahead the right to education for children in conflict situation.

Hausler, Urban and McCorquodale examine the right to education as a human right,¹⁰² which is usually denied and not given much relevance. They further seek to examine the right to education and particularly equality in the access to education in conflict and emergency situations. They also interrogate important aspects in access to education which include the protection of educational facilities and teachers working in conflict situations. The role of the right to education as an enabling right is emphasized and the international legal framework has devised a standard measure to the right. In addition the trio reviews the right to education under IHRL, IHL and ICL. The handbook guides on how compliance with the international legal regimes will ensure realization of the right to education in conflict situations.

The book is quite in tandem with the study herein, since Kenya under the constitution, 2010 embraces international law, as recommended by the book .However this has not guaranteed access to the right to education for children in conflict situation. Moreover teachers not hailing from conflict regions have not been spared while educational facilities are vandalized exposing candidates to unfair competition against their peers not affected by conflict. In line with John Rawls theory, it is clear that the government needs to do more than having laws on paper if the right to education is to be realized.

Fons Coomans¹⁰³ argues that it is the state's obligation to ensure equity in access to right to education through maximum utilization of the available state resources. The absence of

¹⁰²Hausler, Urban and Mcquondale (n14)

¹⁰³Fons Coomans, 'Identifying the Key Elements of the Right to Education: A Focus on its Core Content,'

which, the State shall be considered to be in violation of its obligations. The book is quite in line with the study, in that it emphasizes the duty of state in ensuring access to right to education through appropriate legal approaches. It is hence safe to echo Coomans views, that the Kenyan state has abdicated its duties to children in conflict situation by failing to promote the right to education, rendering many more children in conflict illiterate.

Patricia Kameri-Mbote¹⁰⁴ examines the fallacies of equality and concludes that gender equality has many legal paradoxes. She argues that equality raises more questions than answers because the law is majorly nuanced by the realities within which it operates. She problematizes the fallacies of normative equality as provided in law in the absence of mechanisms to ensure realization of equality by and between the various subjects of law. Of importance is her argument on possibility of marginalization of some subjects of law due to the exclusion of knowledge and information about them in most narratives. The similarity between the article and this study is that they both deal with complexities of equality and how some subjects are left out on their rights .It however concentrates on gender inequalities at the expense of the right to education.

1.7.2 Barriers to Access to the Right to Education for Children in Conflict Situations

Challenges faced by children in conflict areas of Tana River Delta, Turkana's Kapedo, Mandera, wajir, Eldoret and Mt Elgon are examined. The research informed the study that

available at <http://www.crin.org/docs/Coomans-CoreContent-Right%20to%20EducationCRC.pdf> accessed 14th November 2013

¹⁰⁴Patricia Kameri-Mbote, 'Fallacies of Equality and Inequality: Multiple Exclusions in Law and Legal Discourses, 2013, Inaugural Lecture, University of Nairobi

the main cause of conflict is poverty and scramble for the meager resources available; consequently the children in conflict miss out on their very basic rights.

In their article, *Wasted Lives: Internally displaced persons living in Camps in Kenya*, Abuya and Ikobe discuss challenges that were faced by IDPs in 2008 in Kenya after the post election violence. The article argues that despite the provisions in International and Municipal law books in the protection and provision of basic needs, the Kenyan government failed to meet its legal obligations of delivering basic needs, including education.

The research at hand is in agreement with the findings of the article, save that it discusses all basic needs on a wider perspective. This study specifically looks into Kenyan government's legislative responsiveness to access to right to education for children in conflict situations. Which right is strangled and needs urgent remedies to move it from paper to action if it is to be of any consequence to the children in conflict situation lives.

Collen and Mooney¹⁰⁵ look at the right to access to education in conflict situations as an enabling right to attainment of stability and normalcy for the children in conflict. Like other authors, they assert that it is government's obligation to provide free and compulsory basic education. In unison the book and the study illuminate how education is in many cases, especially during armed conflicts neglected. Thus it is the onus of the state to ensure right to education is accessed by all.

¹⁰⁵Erin Mooney and Collen French 'Barriers and Bridges: Access to Education for Internally Displaced Children' 2005 Brookings-Bern Project on Internal Displacement
<<http://www.brookings.edu/research/papers/2005/01/11humanrights-mooney>> accessed on 19th October 2014

Safaa El-Kogali examines access to education in conflict situation and particularly for internally displaced persons.¹⁰⁶ He reveals major gaps in the access to education especially between female and male students. Females had low enrolment rates in schools particularly in Darfur, Sudan compared to their male counterparts. There is general neglect of right to education in areas prone to conflict as it is viewed as a developmental activity with little contribution to the basic survival and security of refugees and internally displaced persons. Much as the research agrees with this view, in Kenya there are beautiful provisions on educational rights which need to be translated into action because the law cannot implement itself. Hence, the government needs to move with speed to avail the right to all.

According to the UN Millennium Project,¹⁰⁷ more than half of school dropouts are children from conflict states.¹⁰⁸ There has been concern on how to get them back to school. Some international organizations came up with strategies to ensure these children access education through a campaign; 'Save the Children Rewrite their Future'.¹⁰⁹ The campaign was a success as it saw 1.4 million children access education and the quality improved for more than 10 million children. The challenge remains how to make quality education accessible to more children.¹¹⁰ The article addresses similar views as those sought to be addressed by the study herein save for a departure on the scope, in which the later emphasizes on access to and quality education for all children. That particular limb is well addressed in Kenyan laws, what is missing is a particulate strategy to put it on course and realize right to education for the children in conflict.

¹⁰⁶Safaa El-Kogali, 'Education During Humanitarian Emergencies: The Situation of Displaced Children and Youth in Darfur, Sudan,' *The Population Council* [2011] available at http://www.popcouncil.org/pdfs/TABriefs/32_Darfur.pdf accessed on 14th November 2014

¹⁰⁷UN Millennium Project Task force, 'Education and Gender Equality' (Coordinated by Nancy Birdsall, President of Center for Global Development in Washington DC).

¹⁰⁸Save The Children, (n7)

¹⁰⁹Ibid

¹¹⁰Ibid

Pendlebury and Enslin¹¹¹ assess South Africa's attainment of social justice by successfully overcoming injustices on access to right to education. However, there are no clear criteria for judging the achievement of such an ambitious agenda and despite the various policies coined to curb social injustice the vice still persists. The study at hand is similar to the article in that both deal with social justice. The point of divergence is that the article deals with social justice generally while the study is out to establish the extent to which the Kenyan government facilitates the right to education for children in conflict.

According to Nancy Birdsall, Ruth Levine and Amina Ibrahim,¹¹² to achieve universal primary education by 2015 countries must address shortfalls in access and quality education through improved enrollment, ability to keep children in school and provision of better institutions and more favorable incentives. The writers advocate for education for children in conflict situation. While the views expressed by the writers may be similar to what the current study is addressing, the article is concentrating on primary education but the study particularly seeks to examine Kenya's legislative responsiveness to accessibility on the right to education for children in conflict situation.

Marc Summers¹¹³ notes that during conflict the responsible parties forget about the demographic composition of the refugees and IDPs by ignoring the adolescents and solely

¹¹¹Shirley Pendlebury and Penny Enslin 'Social Justice and inclusion in Education and Politics: the South African Case'

¹¹²Nancy Birdsall, Ruth Levine and Amina Ibrahim, 'Towards Universal Primary Education: Investments, incentives and Institutions' (UN Millenium Project, Task Force on Education and Gender Equality).

¹¹³Marc Sommers, *Emergency Education for Children* The Mellon Reports series (2006) he works as an international consultant on a range of humanitarian concerns, among them education, the impact of war on child and youth populations, and reconciliation in post-war communities. He is also a Research Fellow with the African Studies Center at Boston University.

focusing on infants and expectant mothers. The girls fall victim of many ills such as rape and defilement while the boys are in the most dangerous situation as they can be recruited and conscripted into gangs. These ills befall them as a result of boredom and absence of education thus their days are unstructured with traumatizing memories, fears breeding possibility of violence.

Further, Sommers argues that Education is a right of all children, but it is a right that, more often than not, refugees and displaced children miss out on. Yet, despite such calls for support and aid for emergency education it reaches at best only 30% of the victims. This support is often subject to extremely disruptive short-term emergency funding arrangements.¹¹⁴

Marc has compiled demands and challenges of emergency education but there is no response to his desperate calls for refugee children. Concerns of Marc Sommers are pertinent. The political instability in South Sudan dictates that he desperately pleads for help which comes at the discretion of well wishers. The Kenyan scenario is different and hence the research herein is particulate as it seeks to address these very important needs as demonstrated in the objectives and theoretical framework.

The UN Special Rapportuer on Human Rights, in her two articles, discusses how children in conflict have been denied their right to education by states which are obligated to provide it. In the second Article, Human Rights Obligations: making education available, accessible,

¹¹⁴ibid

acceptable and adaptable premier's No.3 she developed the framework on the right to education.

The framework is called Four As, it is a standard used by CESCR-Committee on Economic Social and Civil Rights. That states should use as a tool to understand the various dimensions that the right to education entails in practice. The state obligation includes, to respect, protect and fulfill the four features of the right. The Article is similar to the study in that its concern is the protection of the right to education in all levels. The theme of the study is however narrowed down to education of children in conflict situation, specifically basic education, but the 4As will be used as a yard stick to measure standards of the right to education in conflict.¹¹⁵

According to UNICEF and UNESCO article, access to education is both a fundamental human right and a protective tool for displaced persons. Further, Susan Nicolai and Carl Triplehorn argue that education is a protective tool for children in conflict.¹¹⁶ Education provides an opportunity at the camps and beyond for children and youth to develop careers, intellectual, emotional and physical resilience.¹¹⁷ The research herein hails the views held by the articles above and will be establishing through its objectives and research whether that is the position on the ground.

¹¹⁵Kathrina Tomasevick, Annual Report of Special Rapporteur on the right to education, UN Doc E/CN.4/1999/49, paras.51-74; e/cn.4/2000/6, paras.32-65,E/CN.4/2001/52, Paras 64-77 and E/CN.4/2002/60, paras.22-45.

¹¹⁶Nicolai and Triplehorn (n26).

¹¹⁷UNHCR, UNESCO and UNICEF: Concept Note on Refugee Education in Kenya 2012; Developed by the Ministry of Education, Directorate of Policy and Planning.

Participants in a workshop organized by African Union's Department of Rural Economy and Agriculture, the AU Inter-African Bureau for animal Resources (IBAR), and the UN Office for the Coordination of Humanitarian Affairs-Pastoralist Communication Initiative (OCHA-PCI), pastoralists across Africa want their children to have education that suits their nomadic lifestyle. This position coupled with constant conflict has reduced education standards in the region. The article is addressing similar concerns as those sought to be addressed by this study except that they are only addressing issues affecting nomadic children. The article leaves out the other parties in conflict, on grounds of being rivals to the nomads. Conversely the study herein gives the issue a holistic approach; it will assess the extent to which law and government facilitates education for all children affected by conflict, pastoralists included.

1.7.3 Realizing the Right to Education through Responsiveness and Implementation Strategies.

Kenya has acknowledged the provisions on the right to education as coined in the international instruments such as UHDR, UNCRC through ratification and making them part of the domestic laws¹¹⁸. Additionally, other legislations such as Children Act 2001, Basic education Act 2013 and policy framework such as Sessional Paper no. 1 of 2005 on education, Training and Research, Universal Primary Education and the education pillar Vision 2030, have been passed to protect the holders of rights to education. Kenya Association for Parents carried out a survey to establish awareness, information, and responsiveness among right holders and duty bearers on basic education as enshrined in international instruments, National laws and policies.¹¹⁹

¹¹⁸Article 2 (5) (6) Kenyan Constitution 2010

¹¹⁹Draft Report Baseline Survey on right to education and Parental involvement in school governance in Kenya tracking awareness, information and responsibility among stakeholders in basic education. The study Commissioned by: Kenya National Association of Parents, November 2009.

Additionally in an effort to reform its education sector Kenya has come up with task forces, Commissions and working parties.¹²⁰The framework of the current education is guided by Kenya Education Sector Support Programme (KESSP). However there is no express mention of the right to education for children in conflict situation in The Basic Education Act and or Children Act. Consequently, denying these children their right to participation in nation building.

The Education budget for the financial year 2011-2012 was kshs.139.73billion, most of it going to infrastructural development, and it has continued to reduce in relation to national budget.¹²¹ A strong management of budget implementation is an indicator of development in society.¹²² Development slows down when the actual budget expended is smaller than the budget planned.¹²³ The ministry of education has been suffering this trend in that in the year 2008 to 2011 budgets 155.1 billion was unspent, which amount would have been used to build 3875 houses for teachers.¹²⁴

With devolution, the county governors are supposed to be building nursery schools and maintaining staff thereof. Primary schools and secondary schools have been left with the National Government and are not well managed despite the heavy budget on education. The education expenditure has been 42% of the budget allocated in the entire year¹²⁵ arbitrary

¹²⁰ The Ominde Commission; 1964 The Presidential working party on the second University in Kenya by Makay, 1981; The national conference on education training, 2003 whose recommendations led to the current framework on education Sessional Paper No. 1 of 2005.

¹²¹ Education Sector Budget 2011-2012, 'Is there any hope for improving education?' <info@hakielimu.org, www.hakielimu.org> accessed 10 June 2013.

¹²² *ibid.*

¹²³ *ibid.*

¹²⁴ *Ibid.*

¹²⁵ *Ibid*

expenditure by Education Ministry, leaving out sensitive and wanting needs on education led to spending of 42% out of the budget allocation for Education Ministry.¹²⁶ Non accessibility to rights is a major issue which is associated with systemic failures and historical injustices. Finances are also directed to undeserving children. Policy makers and legislators should rise to the occasion by looking at the issues herein visa-viz regulatory and legal framework. Worse still is the failure to harmonize Article 43 (1) (f) and 53 (1) (b). Hence this study will suggest the best policy implementation to bridge the gaps in the education system to realize right to education for children in conflict situation.

According to Lucyline Nkatha Murungi, in her article ‘the right to education under the constitution of Kenya: scope and Prospects for Enforcement,’ In justifying social economic rights, courts ought to look at content and extent of the right. The book discusses state obligation in implementation of the right to education. Murungi specifically looks at the right to education in the constitution and international instruments, its interpretation, right holders and duty bearers, its prospects and judicial enforcement.¹²⁷ The book is similar to the study herein in that the right to education is one of the issues considered for the right holders and duty bearers. The divergence from the study, is that it discusses education generally as a right, but does not consider the right to education for children in conflict situation, which the study at hand seeks to address. It is not enough to state that ‘state has duty to implement the right’ it is more than that. It takes political will to employ implementation strategies hence transform the law from books to reality.

¹²⁶ Ibid

¹²⁷ Lucyline Nkatha Murungi ‘The right to Education under the constitution of Kenya: Scope and prospects for Enforcement’ in Japhet Biegon and Geoffrey Musila (eds), *Judicial Enforcement of Socio-Economic Rights Under the New Constitution: Challenges and Opportunities for Kenya* (Kenya Section of the International Commission of Jurists 2011). 217-244.

1.8 Methodology

A Research Methodology must be systematic, rigorous, conventional and unbiased if it to be considered scientific.¹²⁸This research investigated the extent to which Kenyan law and institutions facilitate access to the right to education for children in conflict situations. To achieve this objective and due to logistical issues sampling was done¹²⁹ by selecting a representative group from the target population through stratified random sampling.¹³⁰It included selection of subjects in existing subgroups by reproducing them in the sample. The method was suitable, due to its ability to include all the respondents by factoring in their differences in terms of age, education levels, and gender among other circumstances that result in conflict.¹³¹A population of 165 was secured, It included an interview with 60 children affected by conflict, 45 of their parents, 30 teachers, 10 Ministry of Education staff,12 community members and 8 international children agencies from the selected conflict hit areas of arid and semi arid in Tana River delta Semikaro, Mt Elgon and Burnt forest-Eldoret.

Both primary and secondary data was collected. The instruments used in data collection included open ended questionnaires, face to face interviews, observation checklist and document analysis. **Open ended questionnaires** were used purposely to give the respondents an opportunity to explain the phenomenon in details in their own words. Interviews were administered on Ministry of Education staff, International children agencies, For Example UNICEF and UNESCO.

¹²⁸ Marshal, C, & Rossman, G. B. (1999). Designing Qualitative Research (3rd ed.). London: Sage Publications 33.

¹²⁹ Ibid 10.

¹³⁰ Ibid 47.

¹³¹ Ibid.

Questionnaire method was chosen due to its ability to collect information from a large number of respondents economically and conveniently.¹³² Interviews method came in handy due to its insightful and convenience in seeking information especially from senior officers who are busy and did not have time to complete questionnaires.¹³³

Face to face interviews entailed the researcher reading a prepared questionnaire and respondent answering the questions raised thereto.¹³⁴ Interviews further, corroborated data collected, from teachers, students and parents through cross checking with data from other education stakeholders. Observation checklist gave the researcher an opportunity to observe the situation on the ground on her own and came up with valid conclusions concerning the phenomenon under review.

Secondary data¹³⁵ was necessary due to some answers being theoretical and required proper directing of mind. They were obtained from the University of Nairobi, School of law Library and online documents which include, Ministry of Education website, the Social Science Research Network (SSRN), Jstor, Bailii, saflii, the right to education website, KLR (Kenya Law Review, Nairobi Law Monthly, Kenya Law Reports Newsletter, among other articles on the education were utilized including the Harvard law journal.¹³⁶

Analysis was undertaken majorly through **qualitative and partly quantitative analysis**.¹³⁷ Qualitative analysis entailed description of the phenomena under research, using factor analysis method which compares the relationship between the dependant variables and

¹³² *ibid.*

¹³³ *ibid* 92.

¹³⁴ *ibid.*

¹³⁵ *ibid* 12

¹³⁶ *ibid* 76-89.

¹³⁷ Nicholas Walliman, *Your Research Project* (2nd edn Sage Publications Ltd) 308.

the independent variable. The analyzed data was presented through spreadsheet programme and variables presented in form of pie charts and bar charts.

Ethical consideration involves making a judgment on what is right or wrong behavior within ones discipline. It also refers to norms governing human conduct which have a significant impact on human welfare. Thus consent to obtain information from respondents was sought before embarking on data collection, for institutions from their management authorities, adult's personal consent while for the children their guardians consent was sought. Respondents were briefed about the study and its significance to them. Confidentiality was assured and the names of the respondents were not featured anywhere¹³⁸

Pre testing was done to check viability of the questionnaires under similar circumstances, before being taken to the field.¹³⁹ The questionnaires for the study were pre tested at Trans Nzoia IDP Camp.¹⁴⁰ This enabled the researcher to correct mistakes that were noted before embarking on the actual research at the focus areas.

1.9 Limitations of the Study

Conflict is not a Kenyan problem *per se* and or limited to the parts earlier stated to be focused by the researcher. Due to logistical issues the researcher could not visit all conflict areas within Kenya. Sampling hence was undertaken to cure the limitation.

¹³⁸ Ibid 191-195.

¹³⁹ Ibid

¹⁴⁰ Ibid

1.10 Chapter Breakdown

Chapter one: The chapter is a brief introduction to the research. It consists of Background to the problem, the history on right to education is discussed both at local, regional and global, statement to the problem, objectives, hypothesis, research questions, theoretical framework supporting the research, literature review and methodology used in the study are discussed.

Chapter two

Legal framework: on Access to the Right to Education for children in conflict situation.

The chapter is a reflection of the first specific objective of the study. It seeks to show the extent to which various domestic, regional and international instruments provide and facilitate access to the right to education and states role under the laws. The framework, generally accepted for measuring standards of education is examined. Judicial response to right to education and the relationship between right to education and other rights are examined.

Chapter three: Barriers to Access to the Right to Education for children in conflict situation in Kenya.

This chapter builds on chapter two and it a replica of the second specific objective. It analyses responses from the study on both primary and secondary data. Barriers to accessing the right to education are discussed. Legal responses and challenges on implementing laws on right to education are examined.

Chapter four: Realizing the Right to Education for children in conflict situation by benchmarking against Israel and South Africa.

The chapter seeks to offer solutions to challenges to access to right to education as established under chapter three, by benchmarking against South Africa and Israel. The chapter is a manifestation of the third specific objective.

Chapter five Conclusion and Recommendations

The chapter summarizes the entire research, gives findings and makes recommendations on the reforms to be made to effectuate right to education for children in conflict situation in Kenya.

CHAPTER TWO

KENYAN LEGAL FRAMEWORK: ON ACCESS TO THE RIGHT TO EDUCATION FOR CHILDREN IN CONFLICT SITUATION.

2.0 Introduction

The chapter is a reflection on the first specific objective, it seeks to expose the extent the various International, regional instruments and domestic laws provide for the right to education and states parties role under this laws. The framework, generally accepted for measuring standards of education is examined. Judicial response on right to education and the relationship between right to education and other rights are discussed.

A review of laws on right to education does not show strictly, how the government steps in to deal with the plight of the children in conflict situation. Consequently, the law enforcers have to be careful on how the law is enshrined and applied, to avoid reinforcing or giving permanence to certain social injustices such as marginalization of certain groups of people.¹⁴¹ This can however yield meaningful fruits if there are laws, regulatory policies and strategies specifically guiding access to rights.¹⁴²

¹⁴¹Kameri-Mbote (n104)

¹⁴² ibids

2.1 Framework on the right to education for children in conflict situation.

2.1.1 Principle of non discrimination.

The principle of non-discrimination on right to education traces its roots to the human rights-based approach on the right to education. The Universal Declaration of Human Rights (UDHR) formally recognized education as a human right in 1948.¹⁴³ The right to education was taken a notch higher when it was recognized as a human right by several Conventions and Treaties. These included the United Nation Scientific and Cultural Organization (UNESCO), Convention against Discrimination in Education (1960) and the International Covenant on Economic, Social and Cultural Rights (1966).

The ICESCR on principle of non-discrimination obligates state parties to formulate laws that ensure equitable distribution of resources¹⁴⁴ but misses out on positive discrimination for equity as envisioned in the distributive justice theory by John Rawls. The European Committee on Social and Economic Rights (ECSECR) explains that indirect discrimination is failing to recognize, take account of all differences among subjects and ensure that the rights and collective advantages that are open to all are equitably accessible.¹⁴⁵ The right to education has long been recognized as not only encompassing access to educational provision, but also eliminating discrimination, through setting minimum standards to improve quality and fulfillment of all the other rights.¹⁴⁶

¹⁴³Universal Declaration of Human Rights, preamble.

¹⁴⁴ICESCR, Article 2(2).

¹⁴⁵Autism-Europe v France, complaint No. 13/2002, 7 November 2003, para 52.

¹⁴⁶UNESCO 2007 'A Human Rights-Based Approach to Education for All'

The principle of non-discrimination is further emphasized by the human rights based approach as being key for the best interest and the survival of the child.¹⁴⁷ It includes accountability and the rule of law by identifying ‘rights holders’, in this case children in conflict situation, and corresponding ‘duty bearers’ that is those mandated by law to provide and enhance the right holders capacity to enjoy their rights.¹⁴⁸

Additionally, UDHR in collaboration with UNESCO has set standards in education by formulating a framework on the right to education.¹⁴⁹ The framework acts as a yardstick measuring standards of education and ensuring equity.¹⁵⁰ These core components are also referred to as ‘four A’s namely:¹⁵¹ availability, accessibility, acceptability and adaptability. States parties are obligated to facilitate and provide the right to education under ICESCR,¹⁵² for children in conflict situation. Basic education is available when educational institutions exist in sufficient quantity within a state. Accessibility means possibility of educational institutions being accessible to everyone. Accessibility further includes aspects of physical and economic accessibility. Education should also be acceptable in form and substance through relevant curricula and teaching methods. Adaptability connotes flexibility to change.

These requirements are found in all the international instruments and their General Comments which ought to be met as minimum requirements for enjoyment of the right to education. From the 4A scheme it is clear that the right to education is divided into three;

¹⁴⁷UNESCO 2007 (n33)

¹⁴⁸Sepulveda M & Nyst C (n79)

¹⁴⁹Committee on Economic, Social and Cultural Rights, General Comment 13, The right to education (Twenty-first session, 1999), U.N. Doc. E/C. 12/1999/10 (1999).

¹⁵⁰ibid

¹⁵¹Hausler, Urban and McCorquodale (n14)17

¹⁵²ibid

right to, right in and right through education. Availability and accessibility are of the right to education while acceptability is of the right in education and adaptability is of the category-rights through education.¹⁵³

Even though not universally accepted and applied, the adoption of the four components by bodies such as CESCR, OHCHR, lends them credence.¹⁵⁴ The four A's are used by the CESCR when considering state obligations, on right to education¹⁵⁵ which includes respect, protect and fulfillment of each component on right to education.

The obligation to respect relates to:¹⁵⁶ respect of human rights, meaning state is forbidden from taking measures that may deprive individuals of enjoyment of their rights or ability to satisfy the rights on their own. To protect entails:¹⁵⁷ immediate steps taken to prevent violations of economic, social and cultural rights by the state, its agents and third parties: In case of violation ensuring access to impartial legal remedies. Obligation to fulfill entails measures taken to accord everyone opportunity to enjoy basic rights.¹⁵⁸ The Kenyan constitution guarantees the tripartite obligation,¹⁵⁹ and rights to organization, assembly and association. Sadly nobody has ever challenged the government in court on behalf of these children on their right to education.¹⁶⁰

¹⁵³ Murungi (n127)22.

¹⁵⁴ Tomasvisk (n115)

¹⁵⁵ Committee on International Economic Social and Cultural Rights, General Comment 13, The right to education 1999,para.8.

¹⁵⁶ *ibid*

¹⁵⁷ *Ibid* Article 19.

¹⁵⁸ F Coonsman (n 103)

¹⁵⁹ Constitution Article19 (1)

¹⁶⁰ *Ibid* Article 22

2.2 International law perspective on protection of the right to education for children in conflict situations.

Introduction: The international law perspective for protection of right to education takes three forms: International Humanitarian Law (IHL), International Criminal Law and International Human Rights Law (IHRL),¹⁶¹

2.2.1 International Humanitarian Law (IHL) and right to education.

International Humanitarian Law is the law applicable during and after armed conflict with regard to persons in emergencies; it is sourced from international conventions such as Geneva Conventions, its three additional protocols, case law and customs.¹⁶² IHL does not set out a 'right to education', however, many of its rules are intended to ensure that students, education staff and educational facilities are protected, and that education where it existed prior to conflict is uninterrupted.¹⁶³

Of the three protocols to the Geneva conventions, only 3rd protocol makes vivid provisions for the right to education in emergencies. It mandates the detaining powers,¹⁶⁴ national and occupying powers to avail educational facilities, take necessary measures to protect socio-economic and cultural rights of children under age of fifteen, orphaned or separated from

¹⁶¹ Statute of International Court of Justice, Article 36

¹⁶² Hausler, Urban and Mcquondale (n14)

¹⁶³ Ibid

¹⁶⁴ The Geneva Convention (III) relative to the Treatment of Prisoners of War Article 38, 73 and 125 Geneva, 12th August 1949. The convention is particular to the detained persons and the main obligated power is the detaining power.

their families as a result of war.¹⁶⁵ This is through entrusting them to persons of a similar cultural tradition as the children's parents.¹⁶⁶

The convention ensures consistency of education of children despite conflict by mandating the authority that has taken over the territory¹⁶⁷ to cooperate with the national and local authorities in providing education. Additionally, it ensures best care for the children, through introduction of institutional care in place of foster care regardless of child's nationality.¹⁶⁸

International Customary law which falls under IHL guarantees civilian internees' right to education especially that of children and young people as a precautionary measure to avoid interruption during emergency.¹⁶⁹ To fortify access to right to education, intellectual, educational and recreational pursuits, such as sports and games amongst internee are encouraged.¹⁷⁰

The education of the children in conflict situation, during evacuation and or displacement is maintained with highest levels of continuity.¹⁷¹ The authority ensures the children attend school within places of committal or outside.¹⁷² Favorable provision in view of religious education and moral guidance according to their parent's wishes are given.¹⁷³ Further, grievances of children in conflict are addressed through encouraging communication between

¹⁶⁵ Geneva Convention IV of April 21 to August 12, 1949 protects civilian persons in war.

¹⁶⁶ Ibid article 24.

¹⁶⁷ Ibid. articles, 94, 108 and 142.

¹⁶⁸ Geneva Convention, article 50 para 1 and 3.

¹⁶⁹ Pendlebury and Eslin (n105)

¹⁷⁰ 4th Geneva convention (n169)

¹⁷¹ Additional Protocol 1 Geneva Convention, Article 78(2).

¹⁷² Ibid Article 78(2).

¹⁷³ Additional Protocol II to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), 8 June 1977, Article 5(3)(a).

the children and the relevant authority.¹⁷⁴The right to education is also protected during situations of non-international armed conflicts, through similar provisions and guarantees as those under armed conflict discussed above.¹⁷⁵The provisions herein are in line with Rawls distributive justice theory on positive discrimination for children affected by conflict, to lift them to the level of peers unaffected by conflict.

2.2.2 International Criminal Law and the right to education

Education has not been dealt with specifically under international criminal law. The Rome Statute has however mentioned that the targeting of or destruction of educational property is a war crime.¹⁷⁶ The right to education can however be incorporated under the protection from persecution or incitement to genocide, and amount to crime against humanity under the Rome Statute, if it meets the following criteria:¹⁷⁷

It must be defined as a fundamental right: The denial to a particular group must be on discriminatory grounds based on ones status: It must be part of a widespread or systematic attack directed against any civilian population or in connection with any other act prohibited by the Rome Statute; Perpetrators of this deprivation knew it was part of a widespread systemic attack.¹⁷⁸ Despite Kenya having ratified the Geneva Conventions¹⁷⁹ and recognized

¹⁷⁴ El-Kogali,(n106)

¹⁷⁵ Additional protocol 11 Article 4(3)(a)

¹⁷⁶ Art. 7(1)(h) Rome Statute

¹⁷⁷ ICC, Elements of Crimes, UN Doc PCNICC/2000/1Add.2 (2000) Available at www.icc-cpi.int/NR/rdonlyres/336923D8-A6AD-40EC-AD7B-45BF9DE73D56/0/ElementsOfCrimesEng.pdf (ICC's Elements of Crimes), 10

¹⁷⁸ Save the children (n 7)

¹⁷⁹ Geneva Convention, Ratified on 29th September 1992.

international law as part of Kenyan law the children in conflict situation are not able to access their right to education, educational facilities are destroyed with impunity.¹⁸⁰

2.2.3 International Human Rights Law (IHRL) and the right to education

IHRL makes general provisions with regard to the right to education without mention of conflict or emergencies.¹⁸¹ This law includes the UDHR, UNESCO-CADE, ICCPR, UNCRC, and ICSECR.

The Universal Declaration of Human Rights acknowledges that everyone has right to education and it is free and compulsory at least in the elementary and fundamental stages.¹⁸² Higher education should be equally accessible to all on the basis of merit, technical and professional education shall be made generally available. The inherent and dignity of human beings is recognized at the preamble of the declaration. This has led to the declaration although not a treaty, gaining the status of customary international law and no state party can derogate from it.¹⁸³ ‘Elementary education’ had a relatively clear interpretation in most countries at the time when the (UDHR) was proclaimed.¹⁸⁴ At least, it could be understood in practice to refer to the first stage or level of formal education.

¹⁸⁰ Constitution 2010, Article 2 (5)& (6): Boyden and Ryder (n35)

¹⁸¹ Sommer (n110) pp23.

¹⁸² The Universal Declaration of Human Rights Article 26.

¹⁸³ Ibid 5.

¹⁸⁴ Meeting the Basic Learning Needs: A Vision for the 1990s” UNICEF Publishing House, New York (1990).

The UNESCO Convention against Discrimination in Education (CADE)¹⁸⁵ was the first instrument dealing with education to receive international binding force. It is very articulate in standard setting. It hence was adopted by UNESCO which gives education great recognition in its constitution. UNESCO deals with systemic issues that hinder realization of right to education. It is mandated with ensuring advancement among nations equality of educational opportunity. State parties must undertake to formulate, develop and apply a national policy which will tend to promote equal opportunity and treatment. It should particularly aims at making primary education free and compulsory.¹⁸⁶ It recognizes parents' right of choosing their children's educational institutions in tandem with their religious and moral convictions.¹⁸⁷ It has influenced the UN in articulating right to education for the vulnerable in society. One such influence is the drafting of ICESCR general comment 13 on free and compulsory education.¹⁸⁸ Additionally it played a major role while United Nations High Commission on Refugees (UNHCR) was adopting resolutions on education for refugees.¹⁸⁹ The covenant hence has safe guarded principle of non discrimination and thus ensuring accessibility, availability, acceptability and adaptability which components are key to realization of right to education.

The International Covenant on Economic, Social and Cultural Rights (ICESCR) sets out detailed formulation on the right to education.¹⁹⁰ It generally guarantees the right to education to all and that it,¹⁹¹ should contribute to the full development of the human personality. Merit is vital in attainment of other levels of education, but the designate formula

¹⁸⁵ The UNESCO Convention Against Discrimination in Education, 1960.

¹⁸⁶ Ibid.

¹⁸⁷ Ibid.

¹⁸⁸ Daudet Y and Eiseman P M, *Commentary on the Convention against Discrimination in Education* UNESCO: Paris, 2005) at 2.

¹⁸⁹ Ibid

¹⁹⁰ The International Convention on Economic, Social and Cultural Rights, Articles 13 and 14.

¹⁹¹ Ibid.

for determining merit is left undiscovered.¹⁹² The minority population is not factored in or considered as deserving enough to be granted the right.¹⁹³

ICESCR obligates state parties to ensure provision of essential food stuff, primary health care, or basic shelter and housing, or the most basic forms of education¹⁹⁴ State parties are to take appropriate steps and use the maximum available resources to protect the rights enshrined in the Covenant¹⁹⁵ The CESCR while obligating state parties to demonstrate every effort taken to realize these rights,¹⁹⁶ it has been branded as a setback in realization of the second Generation rights-(right to health, education, social security and mental health).¹⁹⁷ This is despite the progressive realization of rights as enshrined within the Covenant not implying that economic, social and cultural rights can be realized only when a country reaches a certain level of economic development.¹⁹⁸

The Covenant reaffirms right to education as a tool for peace building and thus obligates states parties to consider identifying specific national benchmarks, designed to give effect to the minimum core obligations .Consequently, ensuring the satisfaction of minimum essential levels of each of the rights¹⁹⁹ States should observe and defend the human rights of individuals within their jurisdictions, regardless of the levels of economic development.²⁰⁰ Covenant requires state parties implement in full the policies on prohibition

¹⁹²ICESCR Article 13.

¹⁹³FonsCoomans (n103).

¹⁹⁴ The nature of States' parties obligations (Article 2, paragraph 1 ICESCR), UNCESCR General Comment No. 3 (1990), UN Doc. E/1991/23, Annex III

¹⁹⁵ ibid

¹⁹⁶Hausler, Urban and McCorquodale(n14)

¹⁹⁷ International Commission of Jurist, *Handbook on Human Rights for Judicial Officers* (ICJ: Nairobi,2007) at 3

¹⁹⁸ ibid

¹⁹⁹ Commission on Human Rights resolution 1993/14

²⁰⁰ Annual Report of the Inter-American Commission on Human Rights, 1994 (Organisation of American States,

to discrimination.²⁰¹The Limburg Principles supports this position²⁰² and gives guidelines to realization of the free primary education.²⁰³The covenant has put in place monitoring systems through the Committee on Economic, Social and Cultural Rights (ECOSOC).Its primary duty is to ensure compliance by obtaining reports on what is on the ground from various mandated bodies, such as World Health Organization (WHO), the International Labour Organization (ILO) and Food and Agricultural Organization (FAO).

Convention on the Rights of the Child (CRC)²⁰⁴ also deals with the right of the child to education. Principle 7 Article 28, though in a weaker version is similar to the provisions contained in Articles 13 and 14 ICESCR. However, it provides that education of the child shall be directed towards the development of the child's personality, talents, mental and physical abilities to their fullest potential.²⁰⁵These provisions do not provide for emergency education legislation, hence denying the benefits of education to the child victim of conflict.²⁰⁶

International Covenant on Civil and Political Rights (ICCPR)

It guarantees rights which are commonly known as first generational rights, that is civil and political rights. The Covenant created the human rights committee (HRC)²⁰⁷ to monitor compliance and deal with complaints of violation of individual's rights ratified under the

Washington D.C)

²⁰¹ Ibid Article 2(2)

²⁰²The Limburg Principles on the Implementation of the International Covenant on Economic, Social and Cultural Rights UN Document E/CN.4/1987/17

²⁰³ Article, 14 ICESCR.

²⁰⁴The Convention on the Rights of the Child, Articles 28and 29.

²⁰⁵ CRC, Article.29.

²⁰⁶Ibid.

²⁰⁷ Preamble ICCPR

optional protocol to the covenant. It avails an opportunity for complaints to be heard at the local level. It has been found that other rights cannot be enjoyed without education .Additionally the covenant obligates parents to ensure that moral and religious education of their children is promoted and enforced.²⁰⁸

The Convention on the Elimination of All Forms of Discrimination Against Women²⁰⁹ It has been said to champion for gender equality in access to career, vocational guidance and to studies at all levels. Equity is to be observed in curricula issues, examinations, same opportunities to accessing academic scholarships and elimination of stereotyping gender roles. Convention was adopted in 1962 and entered into force in 1968.²¹⁰

2.3 Regional standards for America, Europe and Africa in facilitation of the right to education for children in conflict situation.

The right to education is recognized and guaranteed under several regional human rights instruments. These include the African Charter on the Rights and Welfare of the Child, which places a twin duty on the state and parents to support the education of the child.²¹¹ As a prerequisite to development, the state shall give the parents material support towards realization of the education of the child, where resources of the country allow.²¹² The Charter obligates states parties to fully support education of the children to the third level of

²⁰⁸ General Assembly Resolution 2200A (XXI), 21 U.N. G.A.R. Suppl. (No. 16) at 59, U.N. Doc. A/6316 (1966), 999 U.N.T.S.302, entered in March 23, 1967.

²⁰⁹ CEDAW, Article 10

²¹⁰ The protocol is to act as a guide on the enforcement and implementation of the Convention whose main aim is to alleviate any and all forms of discrimination in education.

²¹¹ African Charter on the Rights and Welfare of the Child, OAU Doc. CAB/LEG/24.9/49 (1990) Article 20

²¹² Ibid

primary Education.²¹³The state obligation is however not made explicit as it is in other instruments.²¹⁴This gives states a lee way to allege unavailability of resources hence education of these children continues to suffer.

The African charter on People's Rights 1966 safeguards against the abuses by government or ruling power on right to education, for instance, in the Zaire case, the African Commission on Human and People's rights: held that the closure of secondary schools and universities for two years was a violation of Article 17 of the Charter.²¹⁵ Similar violations are seen in the Nyerere Administration in Tanzania, when schools were closed for one year following teachers strike.²¹⁶ In Kenya the teacher's strike which paralyzed education for public primary and secondary schools for three weeks, led to the Education Cabinet Secretary closing schools indefinitely. The state parties hence violate the right to education with impunity notwithstanding provisions of Article 17 of the ACHPR.²¹⁷

Besides the above two instruments discussed, the following guarantees the right to education :the American Declaration of the Rights and Duties of Man,²¹⁸ the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (Protocol of San Salvador),²¹⁹ the European Convention on the Legal Status of Migrant Workers;²²⁰ and the Framework Convention for the Protection of National Minorities²²¹

²¹³ Ibid article 11.

²¹⁴ African Charter on Human and Peoples' Rights, Article 17.

²¹⁵ *African Charter on Human and People's Rights- Free Legal Assistance Group, Lawyers Committee for Human Rights, Union Interafricaine des Droits de l'Homme, Les Temoins de Jehovah v. Zaire*, Communications 25/89, 47/90, 56/91 and 100/93 (joined).

²¹⁶ Available at <www.ipppmedia.com Home>columnist>accessed on 20th September 2013.

²¹⁷ News 24 Kenya, 'Public Primary Schools Close Indefinitely' 17 July 2013.
<http://www.news24.co.ke/National/News/Public-Primary-schools-close-indefinitely-20130717>

²¹⁸ American Declaration on the Rights and Duties of Man, Article 12.

²¹⁹ Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights, Article 13 (Protocol of San Salvador), OASTS No. 69 (1988) (*signed* 17 Nov. 1988) *reprinted*

The various regions seem to make education available generally through the various instruments but lack a particulate touch for the children affected by conflict.²²²

2.4 Legislative Status in Kenya on Right to Education

In Kenya, education earned its status as a right under the Children's Act 2001. The right was further strengthened under the 2010 Constitution.²²³ State duties concerning the right to education are a function of both the level and character of the education in question.²²⁴ For example, basic primary education is an immediate obligation while secondary and higher education are to be progressively realized.²²⁵ There is no mention of education of children in conflict situation in either children Act or the Constitution as will be seen shortly.²²⁶

The Constitution of Kenya while introducing basic education as human right took a right based approach to education. It recognizes that every child has a right to free and compulsory basic education.²²⁷ It further puts duty on state to legislate, policies and other measures, including standards setting, to achieve the rights as guaranteed in the constitution.²²⁸

in 28 ILM 156 (1989), *corrections* at 28 ILM 573 and 1341 (1989), also *reprinted in* Basic Documents Pertaining to Human Rights in the Inter-American System, OEA/Ser.L.V/II.82 Doc.6, Rev. 1 at 67 (1992).

²²⁰ European Convention on the Legal Status of Migrant Workers Articles 13 and 14, ETS No. 93, *adopted* 24 Nov. 1977, *entered into force* 1 May 1983.

²²¹ Framework Convention for the Protection of National Minorities Article 13 and 14, ETS No. 157, *entered into force* 1 Feb. 1998, *reprinted in* 34 ILM 351 (1995).

²²² Graham B. S. (1994) "The Role of the Curriculum", pg. 27-32 in: Minority Rights Group (Ed) Education Rights and Minorities, London: Minority Rights Group.

15 Constitution of Kenya 2010, Article 43(1) (f) .

²²⁴ Convention on Economic Social and Civil rights Committee General Comment No 13- Right to Education (1999) para 51; R. Hodgkin & P. Newell Handbook on the implementation of the Convention on the Rights of the Child 3rd Edition (2007) at pg 418

²²⁵ M. Sepulveda, 178 (n79)

²²⁶ Murungi (n127).

²²⁷ Constitution 2010, Article 53 (1) (b) and 43 (f).

²²⁸ Constitution Article 21(2).

However there is a particulate provision for children right to free basic education.²²⁹ Article 56 (b) of the Constitution makes reference to the ‘marginalized’ and ‘minorities’ and begs to answer the question in the context of education: who is or who can be categorized as a marginalized group?

Under the constitution marginalized group is ‘a group of people who, because of laws or practices before, on, or after the promulgation of the constitution, were or are disadvantaged by discrimination on one or more of the grounds as stated in the constitution’.²³⁰ While guarding against direct or indirect discrimination and promoting human right approach to access to education, state recognizes marginalized groups and vulnerable. It caters for their rights education inclusive.²³¹ However Rawls in his distributive justice theory asserts that discrimination will be allowed if it will lift the disadvantaged to the level of the advantaged.²³²

The constitution has facilitated enjoyment of right to education by sharing duties between national and devolved governments. Pre-primary child care facilities, home craft centers and village polytechnic are under the jurisdiction of county governments.²³³ The National government besides setting education policies, standards, curriculum and examination it regulates primary and secondary schools.²³⁴

Further, minorities is another group of the vulnerable in the society and who need recognition having suffered past injustices. The term ‘minorities is undefined in the Constitution neither

²²⁹The Constitution 2010, Article 53.

²³⁰Constitution of Kenya 2010, Article 260

²³¹ ibid

²³²Rawls distributive justice theory (n73)

²³³4th schedule, part 2 (9).

²³⁴ 4th schedule, part 1 (15), (16).

is there any universally accepted definition.²³⁵ However, minorities could refer to a distinct group of numerically, non-dominant citizens existing in a state or some part of a state.²³⁶ It is hence safe to state that a set of warring people in conflict could be considered as minority.

Constitution addresses past injustices and ensures non-discrimination in future through legislation.²³⁷ The circumstances of the minorities and marginalized groups render considerable barriers and challenges to accessing the right to education, to remedy this, states ought to adapt education to the vulnerable circumstances.²³⁸

Besides Constitution 2010, the Education Act, and the Children Act, Kenya has recently enacted the Basic Education Act²³⁹ that was passed to elaborate on implementation of the 'free basic education' as guaranteed under the Constitution.²⁴⁰ The Basic Education Act is equally administrative and a handmaiden of devolution to ensure that national and county governments are properly equipped to provide education.²⁴¹ However, no mention of education of numberless children in emergency situations is made in all the laws a constantly recurring impediment on their literacy and future

²³⁵Kristine Henrard . 'Devising an Adequate System of Minority Protection: Individual Human Rights, Minority Rights and The Right to Self Determination (Martinus Nijhoft Publishers 2000) 18.

²³⁶ Murungi, (n127) 226

²³⁷Ibid: See pages 24, 42, 114, 128 and 171 of the Final Report of the Constitution of Kenya Review Commission (CKRC), (2005) at pg.108

²³⁸ Ibid

²³⁹Basic Education Act, no. 14 of 2013.

²⁴⁰ Constitution of Kenya 2010, Article 43.

²⁴¹ Ibid.

2.4.1 Policy Framework and Right to Education

The Kenyan government as stated in chapter one has come up with various policies, sessional papers and workforces to address right to education. Some of these policies are discussed below:

The Economic Recovery Strategy (ERS) was introduced by government in 2003 to fight poverty and reduce inequality in accessing productive resources, basic goods and services. Education was seen as a major strategy to conquering inequality and poverty in its linkage to training and acquisition of skills.²⁴² The main objective of education within ERS was to achieve 100% enrolment in primary education and reduce disparities in access to education. This however turned out to be a menace as the infrastructures could not cater for the numbers.

The Welfare Monitoring and Evaluation Survey (WMES) identified high cost of education as a major impediment to realization of right to education.²⁴³ The said cost accounts for 30.7 school dropout in the country. Inefficiency is another shortcoming, all this are common in arid and semi arid regions. The government has tried to counter the short comings by introduction of free primary education revising the curricular to be social economic friendly to the learners and reducing financial burden.²⁴⁴ Further, Interventions such as sensitization of communities on importance of education, increased allocation of bursaries have been employed.

To improve access in education the government introduced free primary education (FPE) this further confirmed the government commitment to implement Universal Primary Education

²⁴² Ministry of Planning and National Development, *Kenya Economic Recovery strategy for wealth and employment Creation 2003-2007* (Government of Kenya: Nairobi, 2003).

²⁴³ Welfare Monitoring and Evaluation Survey (WMES), 1997.

²⁴⁴ ERS pg 32.

(UPE) as provided for in the Basic Education Act and the Dakar Action and Millennium Development Goal (MDG). Although school fees had been abolished other levies are charged that make education for children in conflict situation a nightmare.

2.4.2 Sessional Paper No. 1 of 2005

The paper contains government policy on education. The aim was to provide every Kenyan right to education. It has time frame within which education is to be accomplished. The ministry of education was to monitor the implementation. The paper outlined the challenges that hinder achievement of early childhood, primary and secondary education as inadequate facilities, poor planning and poverty. The challenges have however been addressed by the basic education Act.

2.4.3 Kenya's Vision 2030

Kenya's Vision 2030²⁴⁵ aims at making Kenya a middle income country that provides a high quality life to all its citizens by year 2030. Access to basic education, which falls under the social pillar and whose objective is to reduce illiteracy: by increasing access and transition from primary to secondary through provision of quality and relevant education. Financial burden to be reduced: through provision of bursaries and doing away with some of the educational expenses.²⁴⁶ The ministry has done a pilot project by rolling out a voucher programme in five poor Districts.

²⁴⁵ Government of Kenya, *Kenya: Vision 2030* (Government printers Nairobi, 2007)

²⁴⁶ *ibid*

All the above policies are very positive and would yield better fruits; the questions are why then are children in conflict situation not able to access their right to education? This will be clearer in the next chapter on analysis.

2.5 Judicial Response on Constitution to the Right to Education for children in conflict situation in Kenya.

There has never been a case brought to court specifically touching on right to education for children in conflict situation. There has been however human rights cases which the courts dismissed on grounds of failure to prove *locus standi*. The courts also do not want to be pulled into the politics of the day and allegedly maintaining separation of powers between the three arms of government. This is a regressive culture and a pre-2010 constitutional mentality. In the wake of the transformative constitution 2010 there is change of spirit in that, the social economic rights cases are entertained and courts demonstrating activism.

One such case is *Michael Mutinda Mutemi* who went to court seeking court's interpretation on violation of education right. The Petitioner's son had been admitted to Othaya Boys High school, he could not access the institution for lack of fees as the constituency bursary could not suffice. Judge Lenaola, underscored the importance of social economic rights as not being subordinate to political and civil rights. In line with John Rawls distributive justice theory, the judge found that the state had failed to demonstrate the policies and measures put in place towards realization of social economic rights.²⁴⁷ He referred to a South African Case where the South African High Court found that failure to provide reading materials to students up to

²⁴⁷ *Michael Mutinda Mutemi v Permanent Secretary Ministry of education and two others*(2013) eKLR.

10th grade amounted to a violation of right to education. Education actors should come up with extra classes to enable students catch up with lost times²⁴⁸.

The High Court of Kenya at Nairobi was faced with a case seeking interpretation on extent of facilitation of right to education.²⁴⁹ The applicant sought fees for law school but the parents denied him on ground that they had sponsored his degree education. The case does not fall under the scope of this study as this is post graduate study. It however shows Courts interpretations that are in tandem with modern reasoning. The law school admission is trainings a layer gets before admission to the bar as an advocate. The Court found that this was an integral part of legal education and hence it was viewed that denying the applicant this part of education, amounted to incomplete legal education and thus violation of his Right to education.

In *Wambua vs Wambua* a 22 year old sued the father seeking fees for her college the father declined to pay on grounds that she was above 18 years old.²⁵⁰ Justice Koome held that parental responsibility could be extended beyond 18 years to enable her fully access right to education.²⁵¹ Social economic rights if violated can be challenged in court.²⁵² The latest case though not touching on education and that has demonstrated a lot of judicial activism in protecting minorities, is on interpretation of gay and lesbian rights in regard to registration of their movement.²⁵³ The high Court judges Lenaola, Ngugi and Odunga while basing their

²⁴⁸ *Section 27 and 2 Others v. Minister for education Case No. 2456 Of 2012.*

²⁴⁹ *John Mbatia Kibebo and Another v Eliud Kibebo Mbatia, Civil case 169 of (2008) [2013] eKLR.*

²⁵⁰ *Diana Ndiele Wambua (Civil Cause no.30 of 2003) [2003] eKLR*

²⁵¹ See Section 28 Children Act

²⁵² Article 22 constitution Kenya 2010

²⁵³ *Eric Gitari v Non Governmental Organizations Co-ordination Board and 4 others [2015] eKLR*

ruling on Article 27 of Constitution 2010 allowed registration of gay movement saying religious texts or views on morality cannot override Constitutional provisions.²⁵⁴

The courts however, have to be careful on how they go about such case, otherwise they may open a Pandora's Box where undeserving cases will be filed in court hence clogging the judicial system which is already clogged.

2.6 The relationship between Right to Education and other Rights

Right to education is an enabling right through which these other rights can be claimed and protected. With knowledge acquired, these children can discern the extent to which they can enjoy the other rights and task the government in fulfilling its obligation. It is hence recognized that without right to education the vulnerable children will not function to full capacity.²⁵⁵ Right to basic education is not a lone ranger or stands alone right it is closely linked to other rights. In India the Supreme Court, while deviating from the UHDR classification of human rights into generations and education placed under second generation and right to life first generation, linked it to right to life and held that right to life and liberty inhere in all men.²⁵⁶

As will be seen shortly, in Kenya the right to education is linked to enforcement of other rights. The Industrial court while confronted by two rights to determine which one supersedes the other: That is right to education under articles 43 and 53 and right to strike or hold a peaceful demonstration under Article 41, all under the constitution 2010. The Court linked

²⁵⁴ *ibid*

²⁵⁵ Achoka J (n 92)

²⁵⁶ *Unni Krishnan and Ors V State of Andra Pradesh and Ors 1993*

the teachers strike as infringing on the right to access education. The court however, was of the view that dialogue could have been employed to avert the downing of tools leading to violation of right to access education.²⁵⁷

Further, the courts have recognized state obligation in Protecting, Promoting and fulfilling Socio-economic rights. This was witnessed in the forceful eviction of the tenants and occupants of a school in the middle of the term from a state owned Corporation Estate at Muthurwa Nairobi.²⁵⁸ The court relied on ICESCR General Comment no.7 in upholding the claimants claim that forced eviction ought to be carried out in a manner that does not infringe on already protected rights.²⁵⁹

Additionally, Courts have been seen stepping in to rescue children who would otherwise miss their education due to lack of shelter.²⁶⁰ In the Mitumba Estate Case the occupants of the settlement were allegedly squatters on a parcel of land. Their school too was on the land informally. The occupants moved to court seeking preservation orders. The court allowed the interim orders, despite the orders the alleged lawful owners of the parcel of land demolished the school and the settlement. The court held that forceful evictions amounted to violation of one's right to education.²⁶¹

²⁵⁷ *Teachers Service Commission v Kenya Union of Teachers (Petition No.22 of 2013 [2013] eKLR and Petition No. 23 of 2013 [2013] eKLR*

²⁵⁸ *Satrose Ayuma and 11 Others V Registered Trustees of Kenya Railways Staff Retirement Benefits Scheme and 3 Others, High Court At Nairobi, Constitutional and Judicial Review Division, Petition No.65 of 2010 [2010] eKLR*

²⁵⁹ ICSECR General Comment 7 (General Comments) The Right to adequate housing(Art.11.1): forced evictions: 05/20/1997

²⁶⁰ *Mitu-Bell Welfare Society v. Attorney General & 2 Others, High Court at Nairobi, Constitutional and Judicial Review Division, Petition No.164 Of 2011 [2013] eKLR.*

²⁶¹ *ibid*

Right to education is seen as determining factor if one seeks to enjoy right to vie for certain public offices under the Constitution,²⁶² and Elections Act. The law makes certain academic qualifications mandatory, which one must have, to avoid missing out on their political right to vie for an election.²⁶³ Certificates obtained from outside Kenya have to be recognized if right to education is to be meaningful to the holders. A government body has to give reasons for non recognition of these certificates as was seen in *R v commission for higher Education exparte Peter Soita Shitanda*.²⁶⁴

Conflict is not an unfamiliar scenario in Kenya and neither are the side effects due to lack of practical strategies in implementation of the law injustice such as, discrimination against victims of conflict is experienced. What remains alarming is the laxity to change the ever negative impact of conflict on the children in conflict situation's right to education.²⁶⁵ The law lacks specificity in safeguarding and guarantying the right to education for children in conflict situation, these children therefore are left unattended to by the most immediately mandated by law, that is the National and county governments.²⁶⁶

²⁶² Article 38, Constitution of Kenya 2010.

²⁶³ Section 22, Elections Act, Chapter 7 of the laws of Kenya.

²⁶⁴ High Court At Nairobi, miscellaneous Civil Application 30 of 2013, [2013] eKLR, 19.

²⁶⁵ Interview with Chebet, Mt Elgon, 13th August 2013

²⁶⁶ Interview with Biket and Chebuk, Mt Elgon, 13th August 2014.

Conclusion

The chapter has assessed the legal position on access to the right to education; it is sufficiently and generally recognized for all children. Kenya, has embraced the international instruments into its domestic law. In the next chapter analysis is done on responses on both secondary data and primary data. It is at that point the study will confirm the responsiveness of the provisions and education actors to the educational rights of children in conflict situation. It will thus conclude if the right has any practical meaning in these children's lives.

CHAPTER THREE

BARRIERSTO ACCESSING THE RIGHT TO EDUCATION FOR CHILDREN IN CONFLICT SITUATIONS.

“..... injustice anywhere upsets me deeply, too many children living in conflict face the injustice of being denied their right to education.....voices of teachers and children are captured in their craving for a better world and education is the key to that worldits new ideas give promise to children living in conflict for the chance to access quality education, a better future and lives of peace”.....Archbishop Emeritus Desmond Tutu²⁶⁷

3.0Introduction

This chapter builds on chapter two and is connected to the study’s 2nd specific objective. It analyses, responses on barriers that hinder access to the right to education as established from the children in conflict, teachers, parents, Advocacy groups ,community and policy makers from the study focus areas. The responses from the field work corroborated and underscored the secondary data to the effect that poverty was the greatest inhibition in accessing right to education, non enforcement of laws through practical enforceable means and financial constrains constantly came up too.

3.1 Barriers to Accessing the Right to Education for children in conflict situation.

This part mainly deals with challenges seen in accessing right to education; it is followed by analysis to reveal the extent to which the law and institutions respond to the education of the

²⁶⁷ Access to Education, <<http://www.Warchild.org.uk/issues/access-education>> 7 June2014.

children in conflict situations. Although the right to education is a gateway to realization of other rights, the study established that education right is not given first priority and can only be realized alongside other social economic rights. Despite there being legislative provisions both local and international as already seen in support of right to education, several barriers in accessing right to education are experienced particularly by children in conflict situations. Trauma is one of the challenges emanating from conflict experiences.²⁶⁸

The study was informed that education in conflict situations is too often treated as a secondary need, to be addressed once conflicts has subsided. Yet conflicts and emergencies can go on for years or even decades, leaving many children to grow up without education as well as deprived of the protection and support that going to school can provide.²⁶⁹ It is therefore imperative to understand the importance of education in conflict situation through identifying the barriers that inhibit access to the right to education in conflict situations as examined below.

Respondents Views on Order of Priority in Provision of Social Economic Rights

The respondents when asked to give their views on the order of priority in provision of social economic rights in conflict situation, if this decision was within their preserve: Most of them strongly agreed with highest 53 or 38% that food was essential it should take precedence. It determines whether the child attends school. Shelter takes second position with 37 or 25.5% and education is third with 21 or 14% health stood at 13.1% while security was least with

²⁶⁸ Hyll-sen and Melliore (n9)

²⁶⁹ Mooney and Collen(n105)

10.3% thus as stated education is not a standalone right it can only be realized alongside other rights.

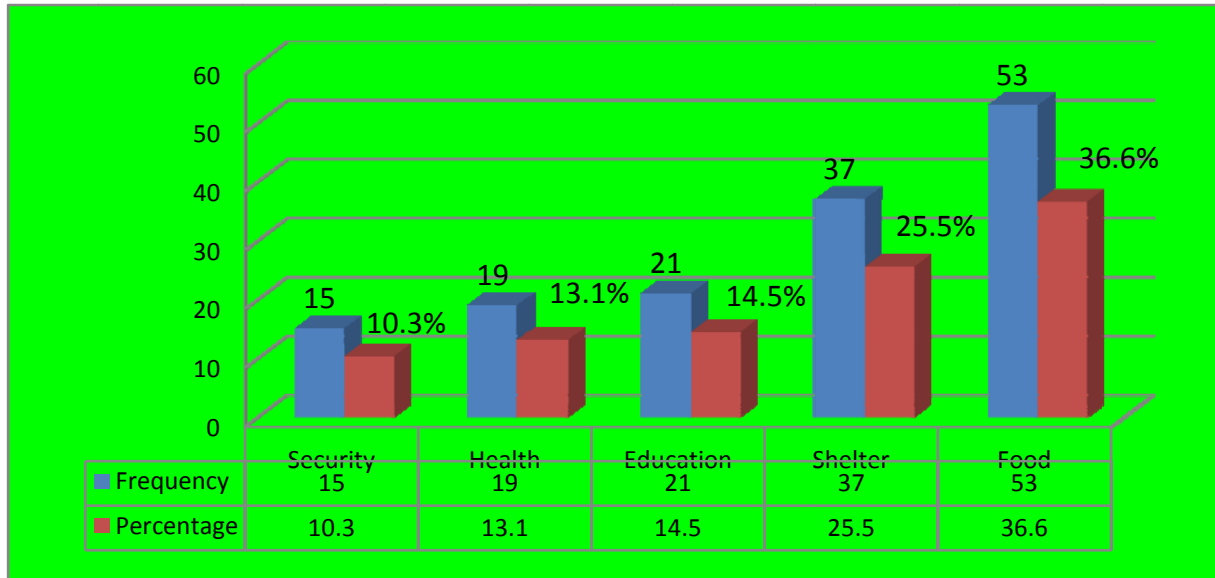


Figure 1: Demands for socio-economical rights in Tana River-Semikaro, Eldoret-Burnt forest and Mount Elgon

The above data supports secondary data on government's role on the right to education in terms of accessibility, availability, acceptability and adaptability. For the few lucky children in conflict situation who attend school, are not able to access their socio-economic rights thus adversely affecting their academic concentration. They travel long distances to get to school which makes them so tired, they have no food most of them work to supplement for family income; culminating with majority hence opting out of school. The law although generally provides for the right to education the government needs to do more than having the laws on paper as envisioned by distributive justice theory.

3.1.1 Inadequate and Insufficient Infrastructure and Structures

The study was informed that lack of infrastructure is a major barrier in accessing education

for children in conflict situation. Most of the schools in areas experiencing conflicts are usually in a dilapidated condition.²⁷⁰ Children and teachers usually flee such schools.²⁷¹ This is because they are scared away so as to ensure that the culture of education is done away with.²⁷² The scenario was experienced in Mt Elgon during the conflict experienced for three years.²⁷³ Currently in northern Kenya teachers are afraid of going to school having seen what be fell their peers who do not hail from the region and do not profess the common religion in the area.²⁷⁴

Further, due to lack of infrastructure and the basics to enable teachers to teach, the volunteer teachers give up teaching leaving the children unattended to.²⁷⁵ Schools in these areas are in most cases established by organizations such as churches or nongovernmental organizations, while the legally mandated by law to provide education remain hands off at the expense of these children's literacy. In arid and semi arid regions besides the conflict distance to education facilities was a big issue. This is due to the nomadic lifestyle of these communities and poverty leading to conflict as they scramble for available scarce resources.²⁷⁶ Though still on paper establishment of boarding facilities, has however been addressed by the basic education Act which mandates the Cabinet Secretary to construct boarding Schools for children in arid and semi arid regions:²⁷⁷ implementation is still a big issue in all the places visited by the researcher.

²⁷⁰ Hausler, Urban and McCorquodale(n14)7

²⁷¹ Interview with Muya an education officer at Mt Elgon, 14th August 2014.

²⁷² Interview with Biketi a Teacher affected by conflict.(20 January 2015)

²⁷³ ibid

²⁷⁴ Interview with Jose an education analyst Kenya (21Jan 2015)

²⁷⁵ ibid

²⁷⁶ Achoka J. S. K, (n92)

²⁷⁷ ibid

3.1.2 Insecurity

Insecurity is a non legal term used to describe situations that cause commotion and disorder within a state or between states. Its disturbance of smooth running of institutions used to facilitate education²⁷⁸ Inter clan fighting has led to increase in illiteracy in northern Kenya. Children are attacked in schools the situation is worsened by poverty leading to clans scrambling for meager resources for example the Ormo and Pokomo clans of Tana River and their conflicting agricultural and nomadic lifestyles. The ministry of education confirmed through a steering committee that due to insecurity in Moyale, Isiolo and the Tana river Delta between November 2011 and Oct 2012 6000 children missed out on their right to education, this is alarming owing to the enrolment percentages in these areas.²⁷⁹ Threats about sexual violence are also faced by the children, especially girls, thus deterring them from going to school.²⁸⁰ The situation has worsened with the glaring target on non Muslim teachers and students by killing them as seen in Garissa University where over 140 non Muslim students lost their lives.

3.1.3 School Policies

Children in conflict usually face many problems when enrolling in schools, where the policy²⁸¹ is to admit only locals. Although not part of education, the dimension is being taken by county governments in the recent past, when employing they consider only residents of a given locale. Administrative barriers are usually put in place to ensure that non residents are

²⁷⁸ Hausler, Urban and McCorquodale(n14)7

²⁷⁹ Kenya Emergency Humanitarian Response Plan 2013 available at <http://unocha.org/cap//accessed> 20 August 2014.

²⁸⁰ ibid

²⁸¹ Draft Report Baseline Survey on the Right to Basic Education and parental Involvement in School Governance in Kenya Tracking awareness, information and responsibility among stakeholders in basic education. A study Commissioned by: Kenya National Association of Parents, November 2009.

not admitted to these schools. These results into the deprivation of the right to education for these children who fall behind their peers in academics or some opt out of school.²⁸²

3.1.4 Harmful Cultural Practice

The study was informed that in conflict hit areas retrogressive harmful cultural practices: such as early marriages and female genital mutilation is a major challenge for young females in accessing the right to education. The practices are prevalent in most conflict hit areas especially arid and semi arid regions of Kenya. Once the poor girls are exposed to the vices their parents see ready money in form of dowry forcing them to drop out of school. Access to education can enlighten the children to discern what is right and hence challenge this outdated acts with relevant authorities.²⁸³

3.1.5 Inadequate Funds

The study established that most parents in conflict situation lack funds to take their children to school. This is despite the abolition of tuition fees in primary schools; secondary schools still require payment of fees. Both primary and secondary education attracts some administrative expenses that are beyond reach for these parents having lost everything during conflict. Other costs incurred by the parents include money spent in buying school supplies, as already stated this is usually a challenge to the parents in conflict situations since they lack any gainful employment. One such scenario is explained below:

²⁸²Beince G, 'The African Union: Concept and implementation mechanisms relating to human rights' <http://www.kas.de/upload/auslandshomepages/namibia/Human_Rights_in_Africa/Gwanas.pdf>accessed 26 August 2013.

²⁸³Orondho J A et al, 'Basic Education in Kenya :Focus on strategies applied to cope with School based challenges Inhibiting Effective Implementation of curriculum,' (2013) 1 (11) International Journal of Education and Research1.

The internally displaced persons in Eldoret and some of whom have relocated to Burnt Forest IDP Camp, had no access to right to education for their children. Wamvua, a parent, had this to say: *“My sons and daughters were killed during 2007/2008 post election violence in Eldoret and left three grandchildren. I have no source of income and survive on doing laundry in Burnt forest town, which earn me little payment. It can neither sustain our basic needs nor education for my grandchildren. The eldest grandchild was due to sit for the Kenya Certificate for primary education but was forced to drop out of school due to lack of enrollment fee for both national and institutional examination. The efforts to seek government to assist in education have borne no fruits. The education administrators say they have no such vote. The children were forced to drop out of school after the conflict. My grandchildren stay at home with no education and no source of income to meet our needs. I can’t raise money for school uniform, fees and other requirements at school leave alone basic needs.”*²⁸⁴

Additionally, the UN programme on HIV/AIDS (UNAIDS) reports that in impoverished countries most women who engage in prostitution or enter into exploitative sexual relationships do so specifically to earn income and school fees, either for their children, siblings or themselves.²⁸⁵ The study found this unbecoming behavior common especially in IDP Camps where men traded the relief food in exchange for sex. Wamvua could not however engage in the vice to raise fees for the grand children.

²⁸⁴ Interview with Wamvua, Burnt forest IDP Camp Eldoret, on 20 August 2014

²⁸⁵ *ibid*

3.1.6 Exploitative Labour

Most children in conflict situations are usually forced to work under harsh conditions and for their families' economic survival. Girls are usually forced to drop out of school, most of them are recruited into child prostitution, and risk being trafficked. The study established that forced labor was rampant with 44.8% of the respondents strongly agreeing. Child prostitution was said to be practiced with 32% strongly agreeing, the children in conflict were at risk of child trafficking response was at 22%.

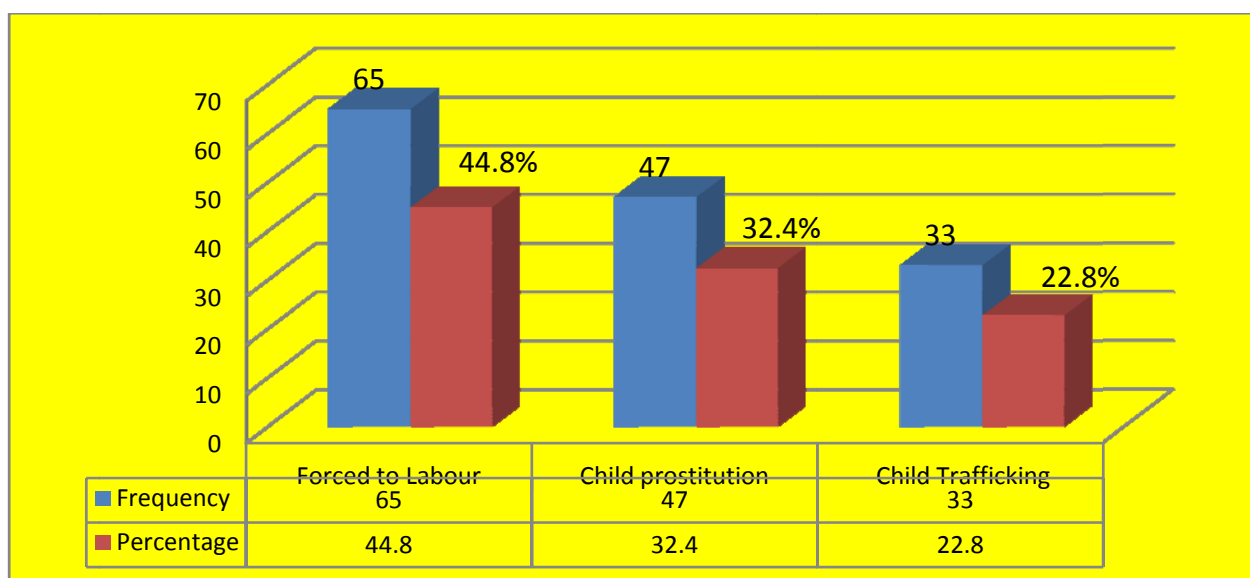


Figure 2: Categories of exploitative labor in Tana River-Semikaro, Eldoret-Burnt forest and Mount Elgon

3.1.7 Traumatic Experiences

The study established that children in conflict situations usually experience traumatic and exhaustion emanating from the conflict. Thus cannot fully realize their potential in the schools they attend. In Kenya around 1999 only an estimated 15% of IDP children were

receiving some form of education, the UNHCR reported that academic performance of those IDPs attending school was found to be significantly constrained by high rates of malnutrition, psycho-social trauma and cognitive disorders.²⁸⁶ In Kapedo Turkana where there has been conflict between the Pokot and Turkana tribes, during the 2014 exam time officers transporting exams were attacked and killed candidates were forced to wait a little longer for replacement of other papers. There was no form of counseling offered to the affected, students by trauma.²⁸⁷ There was no form of positive discrimination accorded to these children to be at par equitably with their peers not affected by conflict.

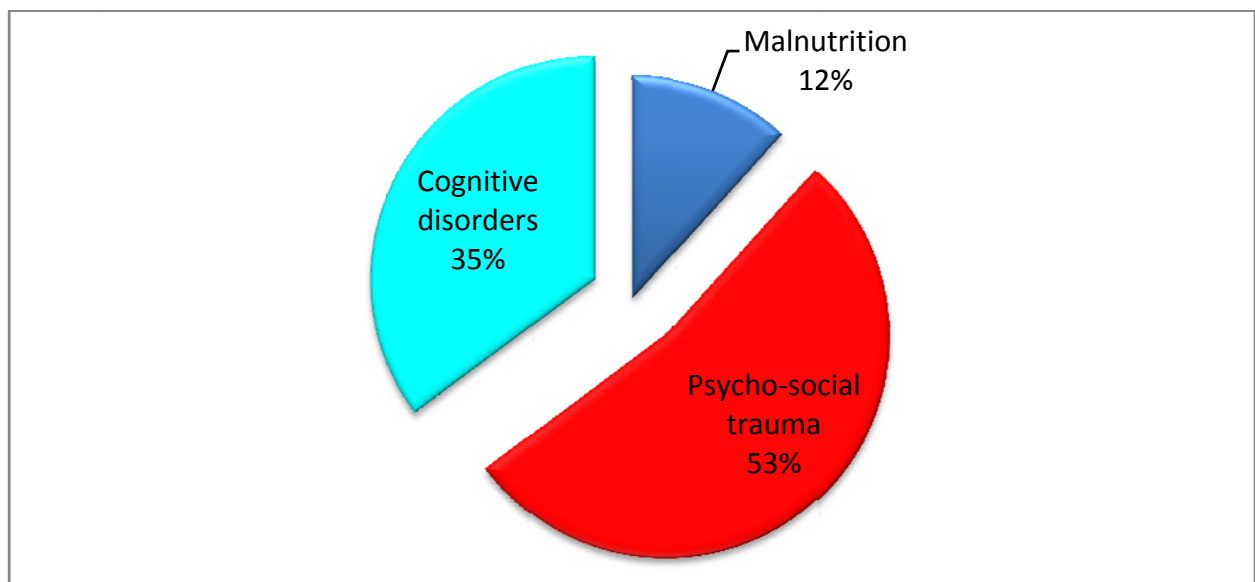


Figure 3: Categories of traumatic experiences at Tana River Semikaro, Mt Elgon and Eldoret Burnt Forest

The study established that 53% out of the children at the study areas were psycho-socially traumatized while 12% were malnourished. 35% displayed cognitive disorders due to trauma this is worrying especially with increase in conflict. Yet no strategies were in place to counsel the victims.

²⁸⁶ Human Rights Watch, paras 91-92

²⁸⁷ Interview with Rosa, Education officer Kenya, 24 December 2014.

3.1.8 Inappropriate Curriculum

Curriculum reform after a conflict winds down is an opportunity to improve the overall quality of education. Attention to curricula is important to avoid reproducing contents that at worst have contributed to conflict and, at best, have done nothing to prevent it. The relevance of the curriculum is particularly important for children affected by conflict, and should address issues of security, health, psycho-social support, conflict resolution and other life skills. This again needs to be taken in the context of the relevance for the child as well as for the country.²⁸⁸ The persistent conflict in the northern Kenya, has left the inhabitants with a feeling that the curriculum should be in tandem with their day today activities as pastoralist, that is turning skins and hides instead of planting beans.²⁸⁹

3.1.9 Poverty

The study was informed that Poverty was a major setback in realizing right to education in conflict situations. According to 38% of the respondents, they opined that it is a major challenge which leads children in conflict situation not to access their rights to education. Absolute poverty is viewed in terms of lack of inadequate resources which is contributed majorly by loss of all gainful resources during conflict.²⁹⁰ This hence means that children involved in conflict lack adequate resources to enjoy right to education as they cannot be able

²⁸⁸ IRIN <www.irinnews.org/report/kenya-dozens-killed-in-tana-river-clashes> accessed 20 September 2014.

²⁸⁹ *ibid*

²⁹⁰ Uwezo Kenya, 2011 Kenya Annual Assessment Report. Available at http://www.uwezo.net/wp-content/uploads/2012/08/KE_2011_AnnualAssessmentReport.pdf, accessed 20 August 2014.

to buy uniforms; books and other education materials.²⁹¹ It extends to inadequate shelter, food and health facilities. The research was informed that after conflict most of these children end up in streets, where majority are infested with jiggers and cannot access, health facilities due to poverty. They are ridiculed by their peers and since they are incapacitated they drop out of school.²⁹²

The free primary education programme adopted in 2003 improved access to education for all children though with a lot of challenges: however, for children in conflict situation it has not been easy to access their rights to education due to financial and logistical challenges.²⁹³

3.1.10 Parental Care and protection

After conflict winds down, most children lack parental care and protection due to loss of parents and others are abandoned in the course of conflict. The African Charter stresses on parental care and protection for children in conflict. Education is a parental and state obligation that most parents are keen to ensure their children enjoy.²⁹⁴ The study was informed that during conflict at the focus study areas, 43% of children were exposed to marriage while 36% were orphaned and 24.8 % were abandoned hence requiring parental cares.

²⁹¹ Margdalene and Supulveda Nyst (n79)

²⁹² Ahadi trust: Help remove my Jigger! Available at <http://www.jigger-Ahadi.org/helpremovemyjigger.html>, accessed 20th august 2014.

²⁹³ Glennerster R et al, Access and Quality in the Education in the Kenyan Education System: A Review of the Progress, Challenges and Potential Solutions (Prepared for the Office of Prime Minister of Kenya, 2011) at11.

²⁹⁴ *ibid*

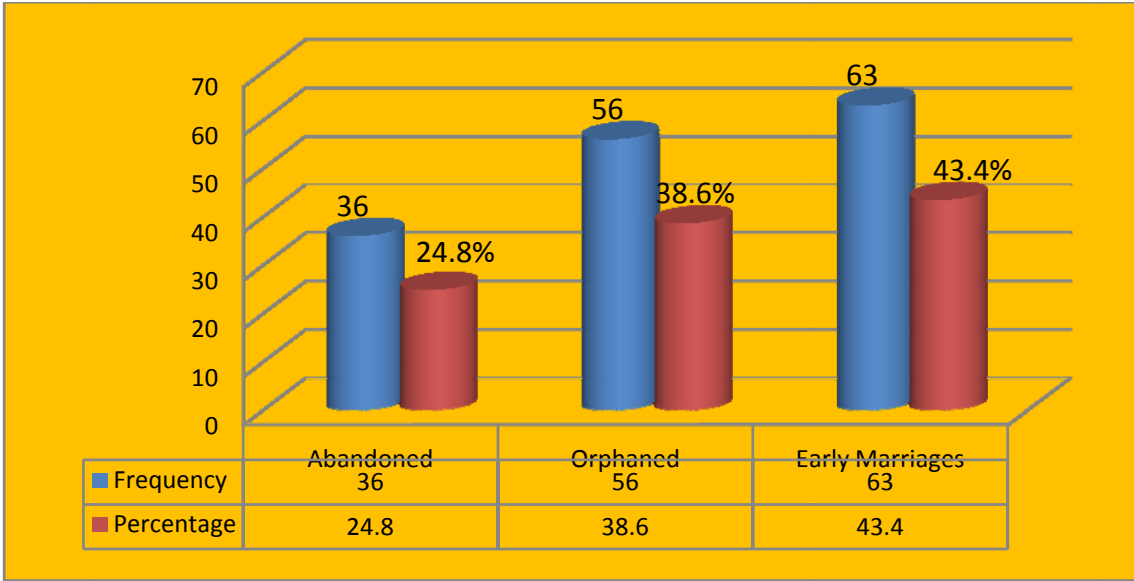


Figure 4: Category of children in need of parental care and protection status in Tana River-Semikaro, Eldoret-Burnt forest and Mount Elgon

3.2 Responses Addressing Barriers to Accessing Right to Education for Children in Conflict Situation.

An analysis of the responses from the field indicated that the best way to promote, protect and fulfill right to education for children in conflict as sampled by study is: 36% of the respondents felt that education related expenses of all nature should be abolished. 26% of the respondents felt that informal education and review of curriculum should be encouraged as this will assist in resolution of conflict. Formal education may not work always especially for persistent conflict affected areas unless it is supported by legal and practicable strategies. 20% of the respondents felt poverty was a major cause of conflict and should be addressed. 15% of the respondents preferred provision of boarding facilities for this is in line with the basic education Act, that cabinet Secretary is to provide boarding facilities and cohesion will help build peace and education will not be interrupted. The major cause of conflict in Kenya is poverty, 27% of respondents were of the view that this should be addressed way in

advance. If only poverty is arrested then the legal framework on education will be meaningful while 3% felt e-learning should be employed.

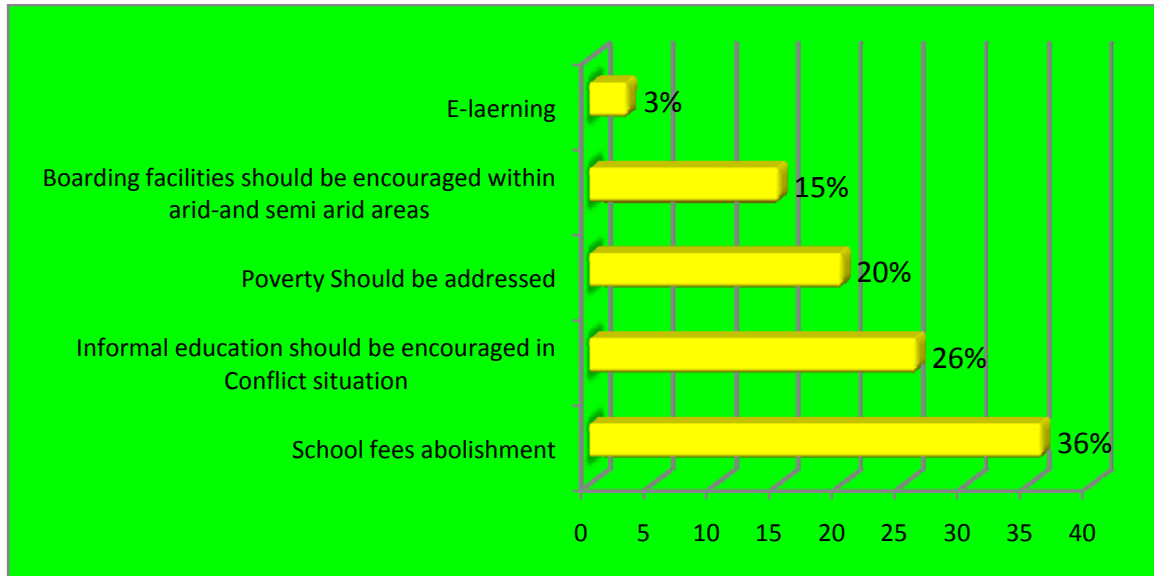


Figure 5: Remedies available in realizing right to education in order of merit in Tana River-Semikaro, Eldoret-Burnt forest and Mount Elgon

3.3 Challenges in Implementing Education Laws and Policies

Although the respondents in the study did not participate in formulation of the legal policies on education, majority were aware of the legal framework put in place to address access to social economic rights. This included the Constitution, Basic Education Act, Children Act, Commissions, Task Forces, Working Papers and the African Charter on the welfare of the child among others. The failure to participate in the formulation of the said policies partly explains the challenges in implementation. The stake holders have not owned the laws and felt left out on their Constitutional rights. When seeking to enforce the laws and policies in place in favor of the right to education: some education administrators were of the view that they do not have a vote catering for right to education for children in conflict while others lamented of lack of resources.

Worse still is the leeway given in the CSECR and UDHR that state even though mandated to ensure accessibility, availability, adaptability and acceptability of the right to education, this is subject to availability of resources.

Additionally accessibility to the right to education has not been given much relevance and support by international legal and political framework. This has been mostly attributed to the recognition of the fact that there are constantly increasing number of conflicts in the world hence change of the attitude and perception when it comes to the right to education in conflict.

Finally, the research was informed that there are no practical strategies put in place on how, when implementation is to be done hence, there is no accountability. Closer home is the progressive realization excuse found in our Constitution hence the social economic rights remains merely a book right and at the mercy of the state contrary to the spirit of the law on rights visa-viz state obligation.

3.4 Conclusion

From the legal and policy perspective and all the responses received, it is acknowledged generally that accessing the right to education guarantees realization of the other human rights. It ensures peace and stability in society and empowers the masses during and after conflict. The achievement of the right to education in Kenya is however a big issue the constitution at article 43 is too general and enforcement depends on how courts interpret progressive realization and the fact that state is obligated to protect, promote and fulfill the right to education for children in conflict. That in case of lack of resources state to demonstrate so. The cabinet secretary is to bring on board all stakeholders on way forward

for basic education.²⁹⁵ What it boils down to is that access to right to education depends on States parties and education administrators ‘*political will*’ to provide the right. The study argues that there is lack of *practical implementation mechanisms and there is need to review existing laws and policies* on right to education. Thus the right to education is an aspiration. Children in conflict are not able to enjoy the right; they are left out on their very basic right.²⁹⁶

Chapter four, deals with benchmarks that Kenyan administrators on education can replicate through legislative backing to address barriers to achieving the right to education.

²⁹⁵ The Basic Education Act, Section 53.

²⁹⁶ *ibid*

CHAPTER FOUR

REALIZING RIGHT TO EDUCATION FOR CHILDREN IN CONFLICT

SITUATION BENCHMARKING AGAINST SOUTH AFRICA AND ISRAEL

4.0 Introduction

This chapter seeks to give solutions to the barriers to accessing right to education analyzed in chapter three. It is a manifestation of the third objective of the study. The chapter examines strategies employed by Israel and South Africa in ensuring access to the right to education in conflict situations. The two countries were chosen because like Kenya, both fall under common wealth and South Africa was colonized. Although some of the experiences in the two countries in terms of conflict are different from Kenyan experience, the right to education has been well advanced through legislation in tandem with international instruments. This will inform the study on way forward on accessing right to education for children in conflict situation in Kenya.

The South African legal system has made great strides in realizing socio- economic rights and in particular the 1996 Constitution is quite protective of basic education. The South African Judiciary is alive to the international standards in enforcement of socio-economic rights and has given a more practical and purposive interpretation of fundamental human rights.²⁹⁷ The courts have also resolved to issue supervisory orders, while allowing parties to engage in negotiations on socio-economic rights but retain residual jurisdiction to grant appropriate remedies.²⁹⁸

²⁹⁷Craig Scott & Patricia Macklem (1992) 'Constitutional Ropes of Sand or Justifiable Guarantees? Social Rights in a New South African Constitution', University of Pennsylvania Law Review, Vol.141, No.1, 17.

²⁹⁸*Grootboom v. Oostenberg Municipality and others 2000 (3) BCLR.*

4.1 South African Legal framework on access to right to education

*Education is an important tool that leaders can use to change the world; especially in conflict situations it reduces povertyNelson Mandela.*²⁹⁹

As already stated like Kenya, South African's indigenous population socio-economic rights suffered a great deal especially during apartheid.³⁰⁰ The study was informed that apartheid, lead to poverty, orphaned children ,exploitative labor, lack of parental care, segregation and language barriers worked against the indigenous South Africans.³⁰¹ It is against this backdrop that after independence, the right to education was fully recognized in the constitution.³⁰² Further, the education department on realizing that majority of the school consists of most disadvantaged and vulnerable children, came up with policies and working papers that deliberately gave grants to disadvantaged blacks to realize equity.³⁰³

The Education ministry in furtherance of the spirit of equity as discussed by John Rawls in his theory on distributive justice theory coined the principle of promoting to mainstream learning of all the vulnerable children. Governance of schools has been devolved to schools to allow parents participation in management of the schools.³⁰⁴ Further funding strategies have been introduced by management to address right to education for the vulnerable learners and institutions.³⁰⁵

²⁹⁹ War child access to education (n7).

³⁰⁰ Scott & Macklem P. (n313)

³⁰¹ Beiter K D, *The Right to Education by International Law* (Martinus Nijhoff Publishers:Boston,2005) at 23.

³⁰² *ibid*

³⁰³ Department of Education, *National Norms and Standards for funding* (Government Printers: Pretoria, 1998b)

³⁰⁴ *ibid*

³⁰⁵ Department of Education white paper 6: *Building on Inclusive Education and Training system* (Department of Education, 2001).

4.1.2 Accessing right to education in South Africa.

Accessing right to education means everyone being able to get the basic education without discrimination, this means ones sex, color, religion and ethnic status should not be a determining factor.³⁰⁶ Just like it is in international regimes in South Africa access to education is the sole responsibility of State and it is to guarantee and ensure everyone accesses the right. .³⁰⁷ The state in fulfilling its obligation is guided by the 4As framework, Availability, Accessibility, Acceptability and Adaptability.

Access to education means economic and physical accessibility for instance the administrative charges have been made affordable and learning institutions brought nearer to the learners.³⁰⁸ The South African high court while determining the issue on accessibility held that segregation of institutions for blacks and the Boers was against internationally laid down standards on access to right to education.³⁰⁹ In the researcher's views allowing separate institutions for the Boers, Zulus and the other South Africans would result in training the young people that they were different from the others and would be a future source of conflict.

Despite access of right to education for the vulnerable being guided by international legal trends, the South African courts wants to believe that in the 1990s special needs revolved around ones environment.³¹⁰ Poverty, lack of knowledge, political violence and lack of medical facilities were the major factors that exposed children deprivation of their basic

³⁰⁶ Hausler, Urban and Macquodale (n 14).

³⁰⁷ Coomans F, (n 100).

³⁰⁸ ibid

³⁰⁹ *Matukane and Others v Laerskool Potgietursrus*,

³¹⁰ Adelman, H.S, 'The Next 25 years,' (1992) 25 (1) Journal of learning disabilities, 22-27

rights including education.³¹¹ A commission set to look at education needs, found that the colonial regime favored the advantaged and urbanites.³¹² The commission hence recommended legal and educational systems that could address the inequalities or past injustices faced by the learners.³¹³ The objective of the findings was to do away with barriers hindering the vulnerable in accessing basic education through review of the education laws and policies.³¹⁴

4.1.3 Financing Basic Education in South Africa.

Despite the efforts made to realize basic education by allocation of huge budgets out of its national GDP, some children are not able to access basic education due to schools charging some expenses to cover for the deficit from government allocation.³¹⁵ The Education Act gives schools mandate to determine the appropriate levies.³¹⁶ This is contrary to the international standards especially (UDHR) that basic education should be free and compulsory. However, parents who are completely not able to pay are exempted.³¹⁷

Further to the exemptions and in the spirit of distributive justice theory the South African Government has put in place pro-poor funding in form of social grants which translate to

³¹¹ Moro W and King K (eds) *Vision and Reality. Changing education and training in South Afrika*(University of Cape Town Press: Cape Town, 1998) 13

³¹² Department of Education, *Quality Education for all overcoming barriers to learning and developing, The Educational Services* (Government Printer: Pretoria, 1997b) at 209

³¹³ *ibid*

³¹⁴ *ibid*

³¹⁵ Department of Basic Education, *Towards a Basic Education Sector Plan for South Africa 2007-2011*. Pretoria, 2010) 15

³¹⁶ *Du Plessis v. De Klerk 1996 5 BCLR 658(CC)*

³¹⁷ *City of Cape Town v. Rudoph, 2004 5SA39 (C), 74H-75J*

60% of the schools in the country being fees free.³¹⁸The strategy has seen improved enrolment, no repeating of classes and school dropout is a history. South Africa enjoys free education in public schools up to grade 9, while targeting overcrowded areas by allocating 60% of the total national budget. In 1998 more than 90% of 16year olds were attending schools.³¹⁹ To achieve implementation of this policy and for purposes of resource allocation schools are ranked in order of poverty index.³²⁰

4.2 Israel's Legal Framework on Access to Right to Education

Israel is a country of immigrants for the Jewish people who wished to connect with the Zionist law of the Promised Land. The Jewish people were scattered all over the world and after the holocaust there was immediate realization that Israelites needed a home then more than yesterday.³²¹ Following its reconstitution in 1948, the Return home Act was passed that saw most of them return home but had its own challenges weighing heavily on social economic rights. It has had continuous conflict with its neighbors and counter terrorist attacks aimed at elimination of Israel from the world map.³²²It has had to come up with strategies to ensure everyone enjoys the right to education especially the Israel Palestinians, Arab Bedouins and Ethiopian minorities.

The Israel government saw education as the best way to empower its citizens to fight back the tide from its enemies thus adopted the major international instruments.³²³Further it formulated the laws whose purpose was to protect pupils and maintain the level of education

³¹⁸ DoE (2010) *Action Plan to 2014: Towards the realization of schooling 2025*; Government Gazette, No.33434

³¹⁹ Stats S A (2007) *General Household Survey*, July 2006, Pretoria: Statistics South Africa.

³²⁰ *ibid*

³²¹ This is when Hitler's Nazis gathered all the Jewish people from all over the world and massacred them.

³²² Educational Advocacy,<<http://www.pwp.org.il/artidenav.php?id=40.>accessed> 20 march 2015

³²³ The Return Home Act 1948.

in the country.³²⁴ Education was made compulsory and institutional expenses were shared between the central and Municipal Authorities.³²⁵ In 1953 State introduced curriculum review and compulsory education for non Jewish students, school enrolment and transfer arrangement regulation and supervision. Every child in Israel was given an equal opportunity for education.³²⁶ State was obligated to provide free tuition for children with needs. This was besides the physically disabled; the students and pupils that were weak were given remedial tuitions.³²⁷ In tandem with the spirit of human dignity under UNCRC, to protect, promote and fulfill the right to education the Students Rights Law was passed in Israel.

4.2.1 Access to Basic Education in Israel.

Education is a national priority for Israel government (EAA). In compliance with the international standards on accessibility, availability, acceptability and adaptability, everyone is accorded equal opportunity to education and all the parents whether from minority groups have a chance to choose the education of their children. The local education authority refers children to appropriate schools in accordance to social integration.³²⁸ This has help to build strong cohesion among all the Israelites.

Access to Right to Education by Special Groups

To address education issues two commissions were formed to look into education policies in

³²⁴ Educational laws in Israel <<http://CMS.education.govt.il/NR/rdonlys/8037/FSE-6AFC-445A-8TA5-2DB9EAF6184/130303/SectionA.pdf>> accessed 20 March 2015.

³²⁵ The Compulsory Education Act, 1949

³²⁶ Long School Day and Enrichment of Studies Act

³²⁷ Special Needs Education Act, 1988

³²⁸ State Education Law Act 1953

Israel, they recommended two systems of education formal and informal education.³²⁹ Informal education was to cater for weak students and non Jewish speaking minorities, they included the Ethiopian Israel, the Arab Bedouins living in Israel desert and Israel Palestinians; it entails extra school hours, social and youth activities in various educational system and adult education.³³⁰ It is practiced alongside formal education. In case of a sick child being away from school for more than 21 days, the child receives education in hospital or at home. The state and local authority facilitates the said child's education.³³¹

Both Hebrew and Arabic are official languages and municipal legal education is compulsory in all systems of education this is to make it easy to manage the municipalities.³³² Accessing education is compulsory for 3 to 15 year olds unless minister for education gives exemption based on sickness or the children who are privately educated and cannot be integrated to schools.³³³

In the spirit of human dignity under UNCRC, no child is to be discriminated upon or expelled from school unless under laid down provisions of the law. The examination results and student progress is confidentially shared with the parent or guardian of the concerned student.³³⁴ The New horizon Commission found out that food was a challenge to accessing right to education. It recommended that state should hence promote right to education through provision of food in schools.³³⁵

³²⁹ Ojek-Hadash 2008 (New Horizon), OZ La temulara 2011.

³³⁰ Educational Advocacy <http://www.pwp.Org.il/artidenav.php?id=40>

³³¹ Free Education to Sick Children 2001.

³³² ibid

³³³ Compulsory education Act 1949.

³³⁴ Student Rights Law , 2000

³³⁵ School Meals law, 2005

4.2.3Funding Basic education Programmes in Israel

Israel government in a bid to adapt education to 21st century needs came up with a strategic plan which had practical and measurable objectives. The major recommendations were to motivate teachers through competitive remunerations, promotions to be given based on merit, raise teachers status, increase tutoring hours, implementing text book lending for all age groups, and strengthen vocational education among others. There was recommendation to ease the tuition burden through making 3-4 year olds education free.³³⁶ These goes against international standards which recommends free and compulsory elementary education.³³⁷ However as a matter of policy education for 3-17 year olds is free though has to be progressively realized.³³⁸

Following the developments on education, the Israel government increased the education budget up to Kshs300 Billion. Resultantly, over 2,008,000 fresh enrolments have been realized from 1st to 10th grade. Human rights bodies have not been left out they push for better budget for Israel Palestinian minorities' education. The High Court ruled that the education budgetary allocation should factor in beneficiaries' numbers .Despite the terrorist attacks and the schools not having been spared leading to interruption of the education programmes The Israel government has ensured practical strategies are employed to ensure that education is accessible to all.

Additionally, to deal with the insecurity the Israel government came up with the 'shelter safety policy'.³³⁹ The policy required that before any building plans are approved by

³³⁶ ibid

³³⁷ UHDR, Article 26.

³³⁸ Compulsory Education Act 1949.

³³⁹ Educational laws in Israel, (n340).

engineering department of any Municipality one of the requirements is to have provision for shelter bombs prove room within buildings. This was necessitated by the country's conflict during the 1960 between Israel and the Lebanese at *Kerachmona* that saw the right to education and safety of the children seriously jeopardized. The education was interrupted for more than (10) years.³⁴⁰ In the subsequent conflict between the two countries, in 2006 the safety and the education of the children was secured as both the children and teachers securely entered in the shelters.³⁴¹ Israel has the second best academically trained citizens in the world amongst the 32 member states of Organization for Economic Cooperation in Development (OECD) this includes; USA, Germany, Italy, Spain, Japan and Switzerland among others.

4.3 Lessons that Kenya can Draw from above Experiences in Availing the Right to Education

For Israel and South Africa to realize the right to education for children within their respective jurisdictions, it has not been as easy as a 'walk in the park.' It took intervention of many quarters to convince stakeholders on the importance of the right to education. Lessons that Kenya can pick from the benchmarked countries include:

Firstly, devolution of the basic education to the county governments, in Israel following recommendations by the commissions such as Oz Latemurah and Ojek Hadash (new horizon) the education administration was devolved to municipalities. This gave the school community an opportunity to participate in school management and decision making. The same story is replicated in South Africa, which strategy saw realization of the principle of subsidiary.

³⁴⁰ Interview with Gill, at Kerachimona on 4/11/14.

³⁴¹ Supreme Committee on Israel Arab Education v. Minister of defence

Subsidiary entails decision making and implementation organs being closer to the people and hence allowing participation in social economic rights and decision making.³⁴²

In Kenya ,primary and secondary education have not been devolved hence exposing the children in conflict situation to illiteracy and other ills since the people (community) who understand their plight are not involved in decision making.

Secondly, formulation of policies and regulatory measures as seen in South Africa that is pro-poor designed to improve on the access to the right to education. This strategy involved the abolition of the fee charged at the beginning of the schooling years, identification of the poorest districts through indexing that benefitted from provisions. Conversely, in Kenya due to poor planning, well to do and undeserving cases benefit from resources meant for the poor. Thirdly, review of policies to incorporate community or informal educational systems, this has worked in Israel especially for the minorities and non Hebrew speaking, encouraging them to access right to education. This can work in arid and semi arid areas of Kenya where conflict has been persistent.

Fourthly, engaging in dialogue can help change attitudes of the warring parties through peace education, curriculum change to achieve acceptability and allowing participation by community on policy formulation, Sensitization of consumers on the empowering effect of education.

Finally, like in South Africa the courts to which all the vulnerable in society turn to for help should apply purposive interpretive strategies. South African courts interpreted the law at face value but ensure the spirit of the law and purpose it intended to achieve based on circumstances is realized .The same courts issue supervisory orders but retain residual power to determine disputes and give appropriate remedies.

³⁴²Sihanya , B Public Participation and public interest Lawyering under the Kenyan constitution: Theory process and reforms', (2013) 9 (1) Law Society of Kenya Journal, 19

4.4 Conclusion

The strategies employed by South Africa and Israel give a ray of hope to the children in conflict situation in Kenya. If right to education, is to be realized then education stakeholders must reach out to some of desperate cases of conflict the unreached children, such as Brian and the siblings of Mt Elgon, who explained their predicaments since the 2006 Mt Elgon conflict. They were orphaned and infested with jiggers nobody noticed them in streets, their education came to a standstill³⁴³ to mention just but a few of the desperate cases of children in conflict situations in dire need of the right to education. The governments hand is necessary if education rights are to be realized. The next chapter deals with conclusion and recommendations

³⁴³ Interview with Brian, Mt Elgon, 13th August 2013.

CHAPTER FIVE

CONCLUSION AND RECOMMENDATIONS

The main objective of the study was to determine the extent to which the Kenyan government and laws facilitates access to the right to education for children in conflict situation. Kenya having through the domestic, regional and international instruments, committed to provide right to education to all children. The study was informed that the Constitution of Kenya 2010, the Basic Education Act No. 14 of 2013: The children Act No. 8 2011, guarantees accessibility to the right to education for all children in the country. The legal barriers are lack of legal implementation mechanisms, to address poverty, poor infrastructure, retrogressive cultural practices, insecurity and lack of commitment by the education actors.

5.1 Conclusion

The following conclusions are drawn from the findings of the study:

Some international and regional legislation provides specifically for right to education for children in conflict situations.

The study examined the international, regional and national legislative provision on the right to education in conflict situations. The third protocol to Geneva Conventions provides for the right to education in emergencies.³⁴⁴ The detaining powers, national and occupying powers

³⁴⁴ The Geneva Convention (III) relative to the Treatment of Prisoners of War Article 38, 73 and 125 Geneva, 12th August 1949. The convention is particular to the detained persons and the main obligated power is the detaining power.

are to ensure continuity of education by providing and maintaining educational resources, promoting cultural traditions and religion of the affected children.³⁴⁵ There should be proper working institutions devoted to the care and protection of these children's education.³⁴⁶ During evacuation and or displacement they should attend schools within places of committal or outside.³⁴⁷ The curriculum should factor in religious education and morals according to the children's parent's wishes.³⁴⁸

However, some of the international laws lack provisions that expressly address the right to education for children in conflict situations. The Universal Declaration on Human Rights (UDHR) declares free right to education at least at elementary and fundamental stages.³⁴⁹ However there are no mechanisms compelling member states to provide education to children in conflict situations. The International Convention on Economic, Social and Cultural Rights (ICESCR) provides that everyone has the right to education but the minority population is not factored in or considered as deserving enough to be granted the right.³⁵⁰

Convention on the Rights of the Child (CRC),³⁵¹ guarantees the education of the child which shall be directed towards the development of the child's personality and physical abilities to their fullest potential. The UNESCO Convention³⁵² requires government to stir up resources

³⁴⁵ Geneva Convention IV of April 21 to August 12, 1949.

³⁴⁶The Geneva Convention, (iii) article 50 para 1; Para 3 introduces institutional care as the alternative for foster care for orphaned children.

³⁴⁷ ibid Article 78(2) provides;

³⁴⁸ Additional Protocol II to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), 8 June 1977, Article 5(3)(a)

³⁴⁹The Universal Declaration of Human Rights Article 26.

³⁵⁰ The International Convention on Economic, Social and Cultural Rights, Articles 13 and 14.

³⁵¹ The Convention on the Rights of the Child, Articles 28 and 29

³⁵² The UNESCO Convention Against Discrimination in Education, 1960

to progressively realize socio-economic rights for all citizens.³⁵³ However, this right is not easily accessible to the Kenyan children in emergency since most of them are orphaned and or deserted following conflict hence neglected.³⁵⁴ These provisions point to the lack of emergency education legislation which in turn denies the benefits of education to the child victims of conflict.

Despite Kenyan constitution having localized international instruments and in this case touching on right to education, the right is not availed to children in conflict. This is basically due to state's failure to come up with strategies that fit the local circumstances as the practicability of the international laws is unreachable due to poverty and lack of political will.

The Kenyan legal framework adequately facilitates right to education generally for all children in the country.

The study assessed the extent Kenyan legal framework facilitates access to right to education for children in the country. Kenya has keenly followed universal trends while emphasizing on the legal implementation and enforcement of the right to education.³⁵⁵ This is demonstrated through improved funding for education which stands currently at 27% of the national budget.³⁵⁶ The government runs the free primary education programme.³⁵⁷ However, the government has not provided adequate facilities to all regions in the country particularly in the conflict zones.

This is contrary to legal and legislative framework which provides for right to education: the vision 2030 views education as a major pillar to industrializing the Kenyan economy and a

³⁵³ *ibid*

³⁵⁴ UNESCO in the article "Africa: Education Tops Pastoralist Concern" Accessed at <<http://www.irinnews.org/731560/africa-education-tops-pastoralists-concerns>>accessed on 10th June 2013.

³⁵⁵ Wanjohi A. (n57).

³⁵⁶ Ministry of Finance Budget 2013-2014 Highlights available at http://www.treasury.go.ke/index.php/resource-center/doc_download/588-highlights-of-the-2013-14-budgetfinal-june-13th accessed 20 August 2014

³⁵⁷ Ministry of Education Science and Technology Session paper 1 (23).

foundation for human research and development.³⁵⁸ The passage of the constitution 2010 and the provisions therein was hoped to enable the realization of the right to education.³⁵⁹ Constitution provides for the general right to education³⁶⁰The basic primary education is an immediate obligation while secondary and higher education are to be progressively realized these limb is not clear it is left to the courts' interpretation.

The children's vulnerability is recognized by Constitution and protected against discrimination.³⁶¹ However, most children are displaced and live in compromised conditions during the conflict and thereafter.³⁶² The Children Act provides for the right to education without categorization and does not recognize any limitations, resource availability or progressive realization.³⁶³ State at times hides behind non availability of resources as provided under the CSECR.

The Education Act³⁶⁴ is an administrative statute on the various institutions responsible for the management of public learning facilities sponsored or unsponsored.³⁶⁵ There is no mention of responsive mechanism to avail the literacy of children in emergency areas. The Basic Education Act³⁶⁶ addresses the free basic education, is equally administrative and makes no mention of education of children in emergency situations. This is constantly

³⁵⁸The Kenya Vision 2030, the popular version, chapter 3, foundation of Vision 2030 (government of Kenya Nairobi, 2007) pg 8.

³⁵⁹ Constitution 2010 at Article 43(1) (f)

³⁶⁰The Constitution 2010 Article 56 (b).

³⁶¹ See Article 53 (1) of the Constitution, education ought to particularly benefit the child.

³⁶² Abuya and Ikobe (n25)

³⁶³Children Act Section 7 (2)

³⁶⁴ Chapter 211 of the Laws of Kenya

³⁶⁵ Ministry of Education Science and Technology, policy framework for Education , Training and Research Meeting the challenges of Education, training and research in Kenya, Session paper No.1of 2005

³⁶⁶ Basic Education Act no. 14 of 2013

recurring impediment on these children literacy and future, hence calling for practical implementation strategies.

The study established that adaptability and acceptability to the educational rights by children in conflict situations has not been anchored on Kenyan legislation. The curriculum provided by the government of Kenya is not sensitive to the specific needs of children in conflict zones. For instance, the study found out that conflict in Mt Elgon region made it difficult for some students to accept to repeat classes because they felt too old to remain in the same classes they were in, three to four years earlier. Education administrators lacked legal mechanism to address the situation leading to school dropout. Israel's informal education and remedial tuition strategies can help these children catch up with lost times.

Additionally, it was established that the Kenyan government lacks legal guidelines to enable education administrators respond to challenges, as observed during the field work at focus areas. Moreover, the education curriculum does not cater for specific needs of the communities living in conflict zones. In Tana River the pastoralist felt that when asked to undertake agriculture in terms of planting crops in school, the education curriculum was impartial and supported their opponents the agriculturalist. They were of the view that they should learn about turning hide and skin.

Additionally, from the responses on the interviews conducted, and while benchmarking the right to education in South Africa: the study was informed that the greatest impediment to realization of right to education was lack of practicable strategies to tackle poverty. Majority of the respondents 36% were of the views that doing away with school fees and other

administrative expenses will result in realization of the right to education for these children. Otherwise the right will remain a paper right.

Neutrality of the law as seen in Kenya perpetrates injustices against the children in conflict situation, who are always forgotten in the wave of 'everybody has a right to education.

Conflict is not an unfamiliar scenario in Kenya and neither are the side effects. Due to neutrality of the law and lack of practical implementation strategies, injustices such as discrimination against victims of conflict are experienced. In Mt Elgon, for instance during the 2006 conflict, saw teachers, students and parents displaced and even killed.³⁶⁷ The same story is repeated at Semikaro Tana River, Some students disappeared never to be seen; others married at a very tender age for security reasons. Other teachers could not teach in some schools because they hail from a clan different from the one where the school is situated, and which the rebels considered to be their adversary.³⁶⁸

In Northern part of Kenya currently 2015, about 1000 teachers hailing from other parts of the country but teaching there, have refused to go back to their work stations. This is due to fear of insecurity having witnessed in the end of 2014 the killing of their colleagues because they do not profess the common religion in the area. This has been worsened by the massacre of over 140 students and others are still missing from Garrisa University, who specifically do not profess Islam. The above scenario is experienced because the laws are in abstract, lacking strategies of implementation and political good will.

³⁶⁷ Interview with Cherop, Mt Elgon, 12th August 2013.

³⁶⁸ Interview with Phanice, Cheptais Mt Elgon, 12th August 2013.

5.2 Recommendations

1) Review of laws and policies:

a) Devolving Basic education to the county government

The Kenyan constitution 2010, shares out duties concerning education between the national government and the county government.³⁶⁹ The county government only deals with early childhood education and village polytechnic while the bulk of primary, secondary and post secondary education remained at the national government. The study recommends that the entire basic education save for examination and major policy making, *should devolve to the county governments. These will facilitate the principle of subsidiarity which requires that services and decision making should be moved nearer to the people.*³⁷⁰

The Constitution now involves citizens in decision making hence participation will help deliver right to education as the decision makers will be close to the people and address the deserving cases with the urgency as dictated by situation. This will facilitate the formation of the decision making institutions such as the **County Education Board (CEB)**.³⁷¹ The model has worked in Israel and South Africa where education management has been moved to municipal and district levels respectively.

b) Enact policies and or strategies on specific budgetary allocation for education for children in conflict situation.

³⁶⁹ 2nd Schedule , constitution of Kenya 2010

³⁷⁰ Sihanya, B, 'Public participation and Public Interest Lawyering under the Kenyan Constitution: theory, process and Reforms', (2013) 9 (1) Law Society of Kenya Journal, 17.

³⁷¹ Ibid.

There is need for state to ensure that access to right to education for children at marginalized areas through conflict is realized. These includes Arid and semi arid areas of northern frontier, study recommends enactment of legal policies on increased specific budgetary allocation for realization of the right to education for children in conflict situations. These will help institutions to cater for boarding facilities as recommended by vision 2030. While benchmarking *Israel, free education for the sick child, remedial teaching, Shelter system, and community based education through lending books and feeding programs strategies* for children affected by conflict, the funds will help in employment of the above strategies.

c) Sensitization

The study recommends that government should formulate policies that guide sensitization of the citizens on importance of the right to education and the consequences of the repugnant practices such as FGM and early marriages in the lives of children affected by conflict. This model worked in Israel under educational advocacy policy to lift the minorities to the level of other students.³⁷²

d) Reformed education curriculum

Policy makers and legislators should ensure that relevance of curriculum is addressed within legal provisions through all inclusive approach. The curriculum should be costumed to the needs of communities involved in the conflict. For instance, education system should be reviewed to ensure that pastoralist and agricultural communities are educated on conflict management in the context of pastoralist and agriculture respectively. *Israel and South African model on empowering local school authority and dialogue can be imported.* This will

³⁷² Educational Advocacy, (n347)

avoid perceived discrimination on the basis of cultural and socio-economic values of communities in conflict zones.

e) Affirmative Action Strategy

The study recommends practical mechanisms on implementation as advocated for by John Rawls in his distributive justice theory. One such strategy is affirmative action that ensures protection and continuity of the education of children in conflict zones. The ethnic, gender, and religion should be the basis for discrimination to raise the marginalized to the level of those not affected by conflict. These include strategies such as the Israel *Sick child Act of taking education to the needy child, remedial teaching and or catch up classes*. Payments of all forms of levies should be done away with completely.³⁷³

f) Increased Resource Allocation

Increase resource allocation the government can increase resource allocation or the vote for education for children in conflict situation. The same will be utilized in construction of classrooms, pay teachers and buy more teaching materials, better still sponsor more volunteer teachers to colleges. To deal with issues of proper use of resources meant for children in conflict situation, strategies such as South African one where *the schools are graded according to poverty index* will mitigate the plight of children in conflict while dealing with Kenyan culture of using resources for undeserving cases.

³⁷³Konow, J, 'Fair and Square: The Four Sides of Distributive Justice' (2001) 46 Journal of Economic Behaviour 37

g) Addressing the Kenyan culture of misappropriating funds meant for the vulnerable.

Besides policies allocating funds for the right to education for the needy, the government has to deal with Kenyan culture of misappropriating these funds. This is *through use of poverty and or conflict indexing to identify the deserving cases*. The model has worked well in South Africa where 60% schools are offering free education.

2) Judicial Reaction.

a) Judiciary to give purposive interpretation of the law

There is urgent need for the courts *to give purposive interpretation to the enforcement of right to education*, so as to alleviate suffering from the lives of the innocent children in conflict situation. As earlier stated in this study, not many cases have gone to court on right to education, while taking South African and Israel strategy of considering the circumstances and numbers of the beneficiaries when distributing resources this will help in enhancing jurisprudence on right to education, resultantly lift the disadvantaged to the level of advantaged.

b) Harmonization of Judicial decisions- In promotion of socio-economic rights, it is necessary that judicial decision making should have a harmonized standard, harmonization of judicial decisions has never been so urgent as now, judiciary should adopt uniformity in decision making on socio-economic rights.

c) Supervisory Orders- Although courts should be moved and cannot act 'suomoto', like South Africa the courts should be swift to protect socio-economic rights *by encouraging*

parties to negotiate their issues, give supervisory orders but retain residual jurisdiction to issue other remedies.

5.3 Conclusion

In conclusion, it has been noted with great concern that the number of children affected by armed conflicts and humanitarian disasters has been on the increase world over. This hence calls for swift measures to ensure that the right to education is enjoyed by children at all times especially in conflict areas. Otherwise out of the 39 million out of school in the world due to conflict will continue to increase if the above practical interventions are not employed. This is clearly demonstrated in Kenyan by the recent bevy of conflicts, in Lamu County where more than 5000 students in fresh Alshabab attacks were forced out of school. In Kapedo Turkana candidates were sitting their 2014 national examination amid conflict interruptions and delays. While currently there are tribal conflicts between the Turkana, Turgen community and the Pokot where schools have been closed. There has been several loss of lives in Garissa University. The question is, who takes care of the psychological interest of the survivors, to enable them move on with learning normally as their peers not affected by conflict? The distributive justice theory should be seen in action louder and clear. State's hand should be seen through Legislation, and ought to be more responsive through employment of practical enforcement strategies as recommended above. It is not enough to issue empty statements by administrators. Action and political good will is required otherwise right to education for children in conflict will continue to be a night mare and remain a paper right.

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APPENDICES

Appendix 1: Introduction Letter

Alice Bitutu

University of Nairobi, School of Law

P.O. Box 30197- 00100

Nairobi.

20th July 2013

To: Participants in the Questionnaire on Right to education for Children in conflict situation.

I am the above named student undertaking Masters of laws in the above institution. I am researching on the Right to education for children in conflict situation the extent to which Law provides for the same.

The research seeks to recommend legislative reforms to ensure availability and accessibility of the right to education to these vulnerable children. The questions will take the shortest time possible to complete. Your name will not appear anywhere the information hence offered will be treated with a lot of confidentiality.

Thank you in advance for your cooperation and completing the Questionnaire.

Yours Faithfully,

Appendix 2: Questionnaire for Adults

This questionnaire seeks to establish the extent to which children in conflict access right to education. Please tick or explain as appropriate.

1) What do you do in the institution.....

.....

2) What activities do you undertake in relation to Social economic rights.....

.....

3) In your assessment the children you receive what kind of emergencies lead their vulnerability?

Those that are caused by natural disaster

Hurricane/Typhoon Yes [] No []

Earthquakes Yes [] No []

Floods Yes [] No []

Drought Yes [] No []

Human made crises

War Yes [] No []

Internal conflict Yes [] No []

Genocide Yes [] No []

4) Any data for the situation.....

5) If yes, what percentage is caused by natural disaster

0-25% [] 26-50% [] Over 50% []

(a) What percentage is caused by human made crisis

War 0-25% [] 26-50% [] Over50% []

Internal conflict 0-25% [] 26-50% [] Over 50% []

Genocide 0-25% [] 26-50%- [] Over 50% []

4)What challenges do you face while you come up with policies meant to enhance access to right to education for children in humanitarian emergencies?

Lack of facilities is a major problem

- Strongly Agree []
- Agree []
- None of the above []
- Disagree []
- Strongly Disagree []

Travelling long distance

- Strongly Agree []
- Agree []
- Non of above []
- Disagree []
- Strongly Disagree []

Insecurity

- Strongly Agree []
- Agree []
- None of the above []
- Disagree []
- Strongly []

5)What remedies do you propose to enhance right to education for children in humanitarian emergencies

- | | | | | |
|---|-----|-----|----|-----|
| Abolish all education related expenses: | Yes | [] | No | [] |
| Enhance informal education | Yes | [] | No | [] |
| Use e-learning | Yes | [] | No | [] |
| Reduce poverty | Yes | [] | No | [] |

6) Are you aware of any initiatives or practices that may enhance right to education for children in humanitarian Conflict? Yes [] No []

7) If yes list them.....

8) Please rank the following rights in order of importance

(a) Is the most important f is the least important

- (i) Right to Shelter []
- (ii) Right to health []
- (iii) Right to education []
- (iv) Rightto food []
- (v) Right to Social Security []
- (vi) Right to protection from protection from inhuman practices []

9) Are you aware of any legal and policy framework aimed at availing right to education in humanitarian conflict?

10) Any additional information?

.....

Appendix 3: Questionnaire for Children

1) How old are you?

2) Do you go to school? Yes [] No []

3) If no why

I have no uniform Yes [] No []

I was sent home for fees Yes [] No []

My parents are very poor Yes [] No []

I stay in streets Yes [] No []

The school is very far Yes [] No []

My parents ask me not to go to school Yes [] No []

4) How often do you go to school Yes [] No []

Never Yes [] No []

Twice a week Yes [] No []

3 to 4 times a week Yes [] No []

Daily Yes [] No []

5) What do you like about school

6) What don't you like about your school

7) What does your father do for a living?

Works for pay manual chores []

He is yet to find any work []

Works part time []

He is unemployed/retired []

8) Describe your parents, guardians occupation.....

Professional and managerial []

Clerical/sales []

Skilled blue collar []

Semi-skilled and Unskilled []

9) If she/he does not work how is your fees paid

10) What strategies do you propose to improve access to right to education for children on humanitarian emergency?

Enhance informal education

Strongly agree []

Agree []

None of the above []

Strongly disagree []

Disagree []

Abolish education expenses

Strongly agree []

Agree []

- None of the above []
- Strongly disagree []
- Disagree []
- Reduce poverty
- Strongly agree []
- Agree []
- None of the above []
- Strongly disagree []
- Disagree []
- Introduce e-learning
- Strongly agree []
- Agree []
- None of the above []
- Strongly disagree []
- Disagree []

Any other information.....

THANK YOU