

**RECOGNITION AND IMPLEMENTATION OF
THE RIGHT TO EDUCATION: A CRITICAL
ANALYSIS OF SOUTH SUDAN**

By

VIOLA ALPHONSE YAK DENG

G62/82556/2015

**A Research Paper Submitted in
Partial Fulfilment of the requirements for the Award
of the Degree of Master of Laws (LL.M) of the University of
Nairobi**

NOVEMBER 2018

DECLARATION

I **VIOLA ALPHONSE YAK DENG** do hereby declare that this is my original work and has not been submitted for award of other degree in any other University.

VIOLA ALPHONSE YAK DENG

Signed:

Date:

This thesis has been submitted for examination with my approval as supervisor.

DR. NANCY BARAZA

Signed:

Date:

ACKNOWLEDGMENT

I acknowledge the effort of my supervisor, Dr. Nancy Baraza, for her supervision. Her guidance is the reason for the conclusion of this research. I have benefited from her mentorship and supervision.

I acknowledge the almighty God for good health, strength and commitment that made it possible for me to conclude the study. His grace and love has seen me transcend the academia world from my formative years.

I acknowledge the efforts of my parents, Alphonse Yak and Flora Rimond, for instilling the academic culture in my life. Lastly, I acknowledge my husband and children as they have been particularly supportive in helping me finalize this study. Their moral guidance and financial support made it possible for my timely conclusion of this research and the entire LL.M programme at the University of Nairobi.

DEDICATION

I dedicate this study to the women and children of South Sudan, especially who have borne the brunt of the violation of the right to education.

LIST OF ABBREVIATIONS

ASAL	Arid Semi-Arid Lands
ACRWC	African Charter on the Rights and Welfare of the Child
ACHPR	African Charter on Human and Peoples' Rights
AUCPAIDPN	African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CRPD	Convention on the Rights of Persons with Disabilities
CEC	Cluster Education Centre
CDF	Constituency Development Fund
CBE	Curriculum Based Establishment
DBE	Department of Basic Education
DHET	Department of Higher Education and Training
EFA	Education for All
ECDE	Early Childhood Development Education
FPE	Free Primary Education
GER	Gross Enrolment Ratio
GBV	Gender Based Violence
GESP	General Education Strategic Plan
HDI	Human Development Index
HRE	Human Rights Education
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICCPR	International Covenant on Civil and Political Rights
ILO	International Labour Organization
JAB	Joint Admission Board
KCSE	Kenya Certificate of Secondary Education
KESSP	Kenya Education Sector Support Programme
KUCCPS	Kenya Universities and Colleges Central Placement Service
KICD	Kenya Institute of Curriculum Development
LATF	Local Authorities Trust Fund

MHESTPF	Ministry of Higher Education, Science and Technology Policy Framework
MFEP	Ministry of Finance and Economic Planning
MEC	Member of Executive Council
NSSF	National School Safety Framework
NOGs	Non-Governmental Organisations
RTD	Right to Development
SSCA	South Sudan Child Act
SSP	South Sudanese Pound
SGB	School Governing Bodies
SAPS	South Africa Police Serves
SAQA	South Africa Qualification Authority
SIIP	School Infrastructure Improvement Programme
TTI	Teacher Training Institutes
TSC	Teacher Service Commission
TEPD	Teacher Education and Professional Development
TMIS	Teacher Management Information System
TCRSS	Transitional Constitution of the Republic of South Sudan
UNDRD	United Nations Declaration on the Right to Development
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNDP	United Nation Development Program

TABLE OF NATIONAL LEGISLATION AND REGULATIONS

Constitutions

Constitution of Kenya 2010;

Constitution of South Africa 1996; and

Transitional Constitution of the Republic of South Sudan 2011.

Statutes

Kenya Basic Education Act;

South Sudan Child Act 2008;

South Africa Education Laws Amendment Act of 2005;

South Sudan General Education Act 2012;

South African Schools Act of 1996.

Regulations and Policies

Kenya Gender Policy in Education 1994;

Republic of South Sudan Ministry of Higher Education, Science and Technology Policy Framework;

South Sudan General Education Strategic Plan 2012-17;

South Sudan No-Fees Schools Funding Policy 2007;

South Sudan National School Safety Framework 2015; and

South Sudan School Fees Exemption Policy 2007.

TABLE OF CONVENTIONS AND INTERNATIONAL INSTRUMENTS

Conventions

Convention on the Elimination of All Forms of Discrimination against Women 1979;

Convention on the Rights of Persons with Disabilities 2006;

Convention on the Rights of the Child 1989;

International Covenant on Economic, Social and Cultural Rights 1966;

International Covenant on Civil and Political Rights 1966;

United Nations Declaration on the Right to Development 1986; and

Universal Declaration of Human Rights 1948.

Regional Charters and Treaties

African Charter on the Rights and Welfare of the Child 1990;

African Charter on Human and Peoples' Rights 1981;

The African Charter on Human and People's Rights on the Rights of Women in Africa 2003;

African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa 2009; and

The African Youth Charter 2006.

Table of Contents

DECLARATION	ii
ACKNOWLEDGMENT.....	iii
DEDICATION	iv
LIST OF ABBREVIATIONS.....	v
TABLE OF NATIONAL LEGISLATION AND REGULATIONS	vii
TABLE OF CONVENTIONS AND INTERNATIONAL INSTRUMENTS	x
CHAPTER ONE: INTRODUCTION	1
1.1 Background	1
1.2 Statement of Problem	3
1.3 Research Objectives	4
1.3.1 Generic Objectives.....	4
1.3.2 Specific Objectives	4
1.4 Research Questions	4
1.5 Research Hypothesis	4
1.6 Theoretical Framework	5
1.6.1 Legal Positivism	5
1.6.2 Liberal Feminist Theory	6
1.7 The Scope of Study	7
1.8 Justification of Study.....	7
1.9 Literature Review	7
1.9.1 Right to Education at the Global Level	7
1.9.2 Right to Education in South Sudan.....	9
1.9.3 Right to Education for Women.....	11
1.9.4 Right to Education for Children	12
1.10 Research Methodology.....	14
1.11 Breakdown of Chapters	14
CHAPTER TWO: AN OUTLINE OF THE LEGAL FRAMEWORK ON RIGHT TO EDUCATION	16
2.0 Introduction	16
2.1 International Legal Framework	16
2.2 Regional Legal Framework	21
2.2.1 The African Charter on the Rights and Welfare of the Child 1990	21

2.2.2 Protocol to the African Charter on Human and People’s Rights on the Rights of Women in Africa	22
2.2.3 African Youth Charter	23
2.2.4 African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention)	24
2.3 National Level	25
2.3.1 The Constitution	25
2.3.2 The Child Act 2008	26
2.3.3 Rights of Persons with Special Needs and the Elderly	27
2.3.4 The General Education Strategic Plan (GESP) 2012-17	27
2.4 Right to Development as the Completion to Right to Education	28
2.4.1 Globally	28
2.4.2 Regional Perspectives of the RTD	31
2.4.3 The Link Between the Development and the Right to Education	31
2.5 Conclusion.....	32
CHAPTER THREE: CHALLENGES FACING ACCESS TO EDUCATION IN SOUTH SUDAN.....	33
3.1 Introduction	33
3.2 Corruption and Poor Leadership in South Sudan.....	34
3.3 Poverty in South Sudan	37
3.3.1 The Impact of Poverty in South Sudan’s Education System	39
3.4 Insecurity in South Sudan	41
3.4.1 Impact of Insecurity in Education.....	42
3.5 Poor Infrastructure in South Sudan	45
3.6 Various Curricula and Human Resources Challenges	49
3.6.1 Curriculum and Language of Instruction.....	50
3.6.2 Human Resource challenges	52
3.7 Discrimination against the Girl Child	54
3.7.1 Barriers to Girls’ Education in South Sudan	56
3.8 Conclusion.....	59
CHAPTER FOUR: COMPARATIVE ANALYSIS OF SOUTH SUDAN WITH SOUTH AFRICA AND KENYA	60
4.1 Introduction	60
4.2 South Africa	60

4.2.1 The South African Education System.....	60
4.2.3 Poverty	63
4.2.4 Insecurity	65
4.3 Kenya	68
4.3.1 Education System in Kenya	68
4.3.2 Education infrastructure in Kenya	68
4.3.3 How Kenya has resolved education infrastructure challenges	68
4.4 Conclusion.....	77
CHAPTER FIVE: CONCLUSION AND RECOMMENDATIONS	78
5.1 Conclusion.....	78
5.1.1 Recognition of the right to education	79
5.1.2 Hindrances of the right to education addressed by the law	82
5.1.3 Best practices from Kenya and South Africa	83
5.2 Recommendations	84
5.2.1 Implementation of the right to education.....	85
5.2.2 Customized Legal Reforms	85
5.2.3 Affirmative action in the education sector.....	85
5.2.4 Comprehensive legal interventions.....	86
5.2.5 Penal sanctions for violations	86
BIBLIOGRAPHY	87

CHAPTER ONE: INTRODUCTION

1.1 Background

Quality education is the gateway towards the wholesome development of a country and is an important element in assessing the level of development.¹ Education builds human capital, which is an important tool for economic development. Countries that want to progress economically must give adequate attention to education. Development plans for education are a high priority.² Education and development are intimately linked with each having the goal and purpose of enhancing human life. They both focus on the development of human potential by building their knowledge and skill system. The value in human life can only be achieved through education, whether formal or informal. It improves the quality of people's lives and stimulates economic growth. The educational system of a country, therefore, plays a significant role in determining the shape of the future at economic, social and cultural levels. Famed development is the educated and qualified coach who has the necessary knowledge for the knowledge economy tools.³

Educational and developmental policies must be addressed to achieve a higher degree of justice and equality of opportunities for education and participation in development.⁴

South Sudan was a British Colony from 1899 to 1956.⁵ During this period, there was not much effort on the part of the imperial powers to establish schools. Catholic and Protestant missionaries provided limited schooling. Learning was conducted in vernacular, but this did not help learners achieve permanently literacy. After Sudan's independence in 1956, the ineffective church-run schools were shut down in a wave of Islamisation. New nationalized schools were created, which schools used Arabic instead of local languages. The new schools were also inaccessible to most of the population. Educational opportunities became even more dismal once the civil war broke out. The on-and-off civil warfare devastated educational prospects for generations of Sudanese, due to high costs, lack of buildings and insecurity. Since the Comprehensive Peace Agreement of 2005, parents have been pushing for their children to attend school. While facilities are still widely lacking, 500 new schools have been built. These

¹ Ababneh, A., 'Education and Development' (2014) 10 – 17

² Ibid at p. 11

³ Ibid at p. 16.

⁴ Ibid at p. 17.

⁵ WaterforsouthSudan.org, 'Brief History of Modern Sudan and South Sudan' (*Water For South Sudan*) <<http://www.waterforsouthsudan.org/brief-history-of-south-sudan/>> accessed 13 June 2017.

new structures serve the 1.4 million children who are now attending primary school, which is a two-fold increase from five years ago. South Sudan's official independence in 2011 left Africa's newest country without a basic infrastructure in place, with some of the worst human development indicators in the world.⁶

In light of this, the Ministry of Education has dedicated itself to improving South Sudan's education sector. Hon Deng Deng, in his speech, guaranteed the right to an education that is relevant and affordable based on the needs and aspirations of the citizens of South Sudan, in order to enable them become responsible and productive.⁷ In addition, USAID is supporting the establishment of community-based schools to serve out-of-school children, particularly girls, so as to boost women's leadership in South Sudan education through partnerships with established universities in the United States, such as Indiana University.⁸

Education reduces poverty and inequality. Individuals who successfully pursue education are at a better position to secure jobs than those who have not gone through education. Education significantly impacts social cohesion, individual well-being and capability, human capital, governance, economic development with massive intergenerational benefits. The causality between education and economic development runs in both directions.⁹ High-income individuals tend to spend more on education since greater education increases labor productivity and growth prospects.¹⁰

Socially, education provides people with the means to sustain their livelihoods. However, it is not all rosy. Criminals, antisocial elements, and terrorists are now making use of modern science and technology to destroy the fabric of civilized society. Even information upon Bombs and chemical weaponry manufacturing is available on Internet, which in the wrong hands, has led to the loss of many lives over the past few years. Therefore, if properly utilized, education can boost the dignity of life and act as the source of sustenance and vitality to the humankind. However, if misused it has an adverse impact on society.

⁶ 'History of Education in South' (2011)

https://en.org/wiki/Educational_inequalities_in_South_Sudan#History_of_education_in_South_Sudan accessed 18 December 2016.

⁷ USAID 'South Sudan Education' (USAID, 2011) <https://www.usaid.gov/south-sudan/education> accessed 18 December 2016.

⁸ *ibid.*

⁹ William T. Dickens, 'The Role of Education in Reducing Poverty in South Sudan' (2011) 15 – 19.

¹⁰ *ibid.*

The impact of education on the social life of South Sudan citizens is important in the achieving of national security and freedom. Increased access to good quality education is key in ensuring development of the South Sudan community. Lack of access to educational facilities is a great challenge within the community. The demand for quality education outstrips the supply thereof. This largely affected, among others, the South Sudan returnees, who being accustomed to higher standards of education out of the country, had to contend with lower standards. Most families in South Sudan strive to make their lives better, but the lack of education acts as a hindrance to their development.¹¹

Education has a direct impact on value patterns and skills. Studies show that specific sets of background variables such as parental and individual characteristics not only lead to more intense political involvement but also allow for access to higher education. Privileged groups or children of privileged parents are more likely to attain higher education levels.¹²

How have these historical challenges impacted on the recognition and implementation of the right to education in South Sudan? How has the political conflict in the country, infrastructural challenges, and social vices like corruption impacted on the implementation of this crucial right? This study seeks to contribute to knowledge by examining how the right to education in South Sudan has been recognized and implemented. Education is the key to development and the spanner that fixes the social problems of the citizens of a country. A country that recognizes and implements this right evidently makes great strides in development in the economic, social, and cultural spheres of its citizenry.

1.2 Statement of Problem

Despite the fact that the right to education is guaranteed in law at various levels, including international, regional and national instruments, the realization and recognition of this right remains to be a mirage in South Sudan. Unequal access to schooling by gender and location continue to persist. There continues to be regional disparities in access to education by children in rural areas, with girls facing the greatest disadvantage in accessing education. Poor infrastructure, insecurity, corruption and poor leadership, poverty, human resource challenges and mismatched educational curriculum continue to be the reason why the right of education in South Sudan has been infringed. The number of schools across South Sudan is still very

¹¹ 'Report of the South Sudan Education' (*Cluster Impact Evaluation*, 2013) 6.

¹² 'Report on the Impacts of Conflicts in South Sudan' (2013) <http://allafrica.com/view/group/main/main/id/00034550.html> accessed 15 December 2016.

limited compared to the general population.¹³ This study reviews these challenges to access to education in light of the legal framework in order to make recommendations for the improvement of the state of education.

1.3 Research Objectives

1.3.1 Generic Objectives

The primary objective of this research is to analyze the extent to which the right to education has been recognized and implemented in the Republic of South Sudan.

1.3.2 Specific Objectives

This research has three core objectives:

1. To outline the legal regime on the right to education for South Sudan nationals at international, regional and national levels.
2. To analyze the challenges facing the attainment of the right to education in South Sudan.
3. To compare South Sudan's education sector with South Africa and Kenya with a view to drawing lessons and best practices for South Sudan and to make recommendations based on these best practices.

1.4 Research Questions

This research seeks to answer these specific questions:

1. What is the legal regime on the right to education at international, regional and national levels for South Sudan nationals?
2. What are the challenges hindering the attainment of the right to education in South Sudan and to what extent do these challenges affect the state of education?
3. What lessons (for South Sudan) can be drawn from the status of education in South Africa and Kenya?

1.5 Research Hypothesis

1. The right to education is emphasized and prioritized in legal instruments at international, regional and national levels for South Sudan nationals.
2. There are several challenges affecting the implementation of the right to education to education which can be resolved through a review of the laws.

¹³ *ibid.*

3. Lessons gleaned from the South African and Kenyan experience on education will help South Sudan promote her state of education.

1.6 Theoretical Framework

1.6.1 Legal Positivism

The theoretical basis for this study is derived from legal positivism, also known as the analytical school of thought. Its proponents include scholars such as John Austin and Jeremy Bentham. This theory holds that there is no higher law than that created by governments, legitimate or self-imposing, and that such law must be obeyed, even if it appears unjust or otherwise at odds with the “natural” law.¹⁴ Bentham used utilitarianism as the basis for his ideas, which would lay the foundation of modern positive law theory.¹⁵ Further, he felt that law should be completely separated from morality. He argued that judging laws on a moral basis was subjective and would potentially lead to anarchy because individuals would be free to select those laws they feel are designed to meet their needs while disregarding other laws.¹⁶

Positive law provides an objective standard for human conduct. This concept left little room for civil disobedience, and for Austin “the mischief inflicted by a draconian government is less than the mischief of anarchy.”¹⁷ For Austin, laws could not be judged on whether they were bad or good but on how useful they were to society – their social utility.¹⁸ Bentham, on the other hand, felt that humans were motivated by the desire to achieve pleasure and avoid pain. Therefore, it made sense to enact laws on their ability to provide happiness to citizens. According to him, for a law to be just it would provide “the greatest happiness to the greatest number of people.”¹⁹

Chapter One of the Constitution of South Sudan enshrines the rule of law, and reiterates the right to education under Article 29, which provides that education is guaranteed to all citizens without discrimination.²⁰ To achieve this, the government provides free illiteracy eradication programs. However, the situation on the ground is different. Particularly, disobedience to the law has made a sizeable portion of the South Sudanese community unable to gain access to

¹⁴Austin, J., ‘Lectures on Jurisprudence.’ *The Philosophy of Positive Law by Murray*, 1875) 57.

¹⁵ *ibid.*

¹⁶ Chambers, J.B., ‘Legal Positivism: An Analysis.’ *Digital Commons* (2011) 12

¹⁷Austin, J. (note 21).

¹⁸Parekh, B.C., ‘Jeremy Bentham: Critical Assessments.’ *Taylor and Francis*, 1993 227.

¹⁹ *ibid.*

²⁰ Republic of South Sudan *The Constitution* (2011) art 29.

education. Based on this positive legal thought, this study examined whether South Sudan has recognized and implemented the right to education for its citizens as enshrined in the Constitution.

1.6.2 Liberal Feminist Theory

The core of all feminism theories is that women and men should be equal politically, economically and socially. Sometimes this definition is also referred to as "core feminism" or "core feminist theory." Notice that this theory does not subscribe to differences between men and women or similarities between men and women, nor does it refer to excluding men or only furthering women's causes.²¹

Liberal feminists argue that women have the same capacity as men for moral reasoning and agency, but that patriarchy, particularly the sexist patterning of the division of labor, has historically denied women the opportunity to express and practice this reasoning.²² Women have been isolated to the private sphere of the household and left without a voice in the public sphere. Even after women venture into the public sphere, they are still expected to manage the private sphere and take care of household duties and child rearing. Further, liberal feminists point out that marriage is a site of gender inequality and that women do not benefit from marriage as men do.²³

This study was guided by this particular theory as propounded by different scholars such as Mary Wollstonecraft, who argue that women are not naturally inferior to men but appear to inferior only because they lack education.²⁴ She suggests that both men and women should be treated as rational beings and imagines a social order founded on reason.²⁵ In South Sudan, women have been constantly left out from participating in the economic, political and social arena of development. Women are not well recognized in practice, although the Constitution acknowledges the importance of having women treated equally as men. This lack of participation is compounded by the high illiteracy levels of South Sudanese women. The study therefore examined how the government of South Sudan has been influenced by the liberal

²¹'The Feminist Theory', (*Amazon Castle*, 2004) <http://www.amazoncastle.com/feminism/ecocult.shtml> accessed 28 December 2016.

²² Szapuova, M., 'Mill's Liberal Feminism: Its Legacy and Current Criticism'. *Prolegomena* 5 (2) 2006: 179–191.

²³ Judith Lorber 'Gender Inequality' (2010) 12.

²⁴ Shanley, M. L. 2000. "The Subjection of Women". In J. Skorupski (ed.), *The Cambridge Companion to Mill* (Cambridge: Cambridge University Press), 396–422

²⁵ *ibid.*

feminist theory in as far as the right to education for the girl child is concerned. It follows that the right to education is for all South Sudanese citizens, without discrimination on the basis of gender.

1.7 The Scope of Study

This study will be limited to an analysis of the right to education in South Sudan, with particular emphasis on legal recognition and implementation.

1.8 Justification of Study

This study is necessary for a number of reasons, these include the fact that:

- a) There is the need for the analysis of the legal and institutional framework relating to the right to education in South Sudan with a view to determining its adequacy. The inadequacy or insufficiency of legal and institutional frameworks negatively affects the implementation of the right to education;
- b) There are wide gaps in the literature of the right to education in South Sudan with specific emphasis to the existing laws on education. This study seeks provide information on the implementation of the right to education in South Sudan through law review; and
- c) There is need for research on the extent to which South Sudan is implementing the right to education. This would entail an analysis of the challenges that affect the right to education, and will include the making recommendations in order to improve the state of education within South Sudan.

1.9 Literature Review

This sub-section involves a review of the literature related to the right to education and the responsibility of the State to guarantee education. It will cover a discussion on the recognition of the right to education in South Sudan at different levels, a review of the challenges facing the right to education sector in South Sudan and the recommendations on how South Sudan can provide and ensure that all citizens have access to education.

1.9.1 Right to Education at the Global Level

Ronald Lindahl explores the fundamental issues related to education as a human right, particularly in the context of rapid globalization.²⁶ The 1948 Universal Declaration of Human Rights, the United Nations' 1959 Convention on the Rights of the Child, and the UN

²⁶Lindahl, R., 'The Right to Education in a Globalized World' (2006) *Journal of Studies in International Education* 5 – 26.

International Covenant on Economic, Social, and Cultural Rights all declare that education is a fundamental human right. Further discussions have continued at the Education for All conferences held in Thailand in 1990 and Senegal in 2000 as well as at the International Commission on Education for the 21st century's report to the UN Educational, Scientific, and Cultural Organization.²⁷ However, there is no consistent definition of what amounts, qualifies, forms, and content of education meet the minimum requirements of that right. In a globalized world, this issue becomes more complicated. Questions arise as to who should provide education, for whom, how, with what content, and under what conditions. These questions will be attempted by this research.²⁸

Manuchehr, Tavassoli and Naini describe the importance of education in the world and assert education as a valuable means that can be used to promote world peace and reconciliation.²⁹ It is also viewed as an essential right to citizenship and professional practice.³⁰ It has a vital role in safeguarding children from abuse or neglect. Article 28 of the Convention on the Rights of the Child³¹ recognizes the right of every child to free basic education and encourages the development of secondary schooling that is accessible and available. This right is essential to all societies in promoting and achieving stable and harmonious relations among people in a society. Unfortunately, this right is often lost in countries at war and those characterized by armed conflicts. Accordingly, a number of measures are urgently needed to preserve and protect the right to education for children affected by war. These measures should ensure that the right of children to education is respected, even in time of war and armed conflicts.

Bergstrom Ylva in his article³² analyses how the universal right to education has been developed, legitimized and used. The first part of the article focuses on the history of declarations and the notion of the universal right to education. He goes further to emphasize the meaning of 'compulsory', 'children's rights' and 'parents' rights' and critically examines the right of the child and the right of the parent regarding tensions between 'social rights' and 'private autonomy rights.'³³ The second part attempts to scrutinize the underlying assumptions legitimizing the consensus on education, while focusing on the notion of the child. Ylva argues

²⁷ *ibid.*

²⁸ *ibid.*

²⁹ Tavassoli, M. and Naini, 'Education Right of Children during War and Armed Conflicts' (2011) *Procedia-Social and Behavioral Sciences* 302 – 5.

³⁰ *Ibid* at p. 23

³¹ 1989.

³² Ylva, B., 'The Universal Right to Education: Freedom, Equality and Fraternity' (2010), *Studies in Philosophy and Education* 167 – 82.

³³ *ibid.* at p. 170

that a certain notion of what it is to be a human being is inscribed within the circle of access to rights and education. These notions of what it means to be a child, a parent, a citizen or a member of the 'human family' are notions of enlightenment and humanity, and, to his understanding, are aspects of how democracy is configured around freedom, equality and fraternity.³⁴ None of these materials, however, discuss the concept of implementation of the right to education by governments, a gap that this study seeks to fill.

1.9.2 Right to Education in South Sudan

Ted Dagne³⁵ noted that South Sudan faces serious development challenges. One of the main challenges is the lack of good infrastructure and skilled labor because of corruption and dependence on oil revenues to finance the education sector. However, he does not provide recommendations on how to get solutions to the challenges. To cover that gap, this research provides answers to the problems currently bedeviling the education sector.³⁶ A comprehensive review of the status of education in post-conflict South Sudan is also provided.³⁷ This is a result of collaborative work between the Ministry of Education, key education stakeholders in South Sudan, and the World Bank. Its aim was to contribute to the development of a shared vision for the future of the education system between government, citizens, and partners of South Sudan.³⁸ The signing of the Comprehensive Peace Agreement in 2005 marked the establishment of a new education system specifically for South Sudan. Primary school enrolments doubled between 2005 and 2009 from an approximate figure of 0.7 million to 1.4 million. The study provides a sound basis for dialogue about the future of education in South Sudan and will be of use in informing the preparation of an Education Sector Plan for the new country. It underlines the strong progress that South Sudan has made concerning expanding access to education, but also outlines the numerous challenges facing the education sector. However, this research clarifies those challenges.³⁹ The paper, however, doesn't dwell on the right to education in the country from a legal perspective. The current study seeks to discuss the extent to which South Sudan has implemented this right and by so doing fill in this gap.

³⁴ibid.

³⁵Daine, T.D., *The Republic of South Sudan: Opportunities and Challenges for Africa Newest Country* (United States Congressional Research Service, 2012) 14.

³⁶Ibid, at 15

³⁷Africa Human Development Series, *Education in Republic of South Sudan: Status and Challenges for New System* (World Bank, 2012) 15 – 22.

³⁸ Ibid, at p. 20

³⁹ ibid.

Education is a human right⁴⁰ that guarantees the fulfillment of other rights. The Convention on the Rights of the Child requires governments to promote free and compulsory schooling at primary level, and to provide access to secondary education, and tertiary education on the basis of capacity by every appropriate means.⁴¹ This study gives recommendations on how to further the attainment of the right to education.

Avelino Androga's book on the history of education in South Sudan is a pioneer work since it is the country's first secondary school book dealing primarily with the nation's educational history. Even though the focus is on South Sudan, its history cannot be interpreted in a vacuum. The North-South relations are discussed extensively in the book. In the past, secondary school students in Sudan either studied the history of Kenya and Uganda, or the history of North Sudan since no history book for South Sudan existed.⁴² The book however fails to fully provide the history of education in South Sudan. The current study will examine this history.

Akiiki Babyesiza⁴³ offers an in-depth analysis of the relationship between the State, higher education, and society in a multicultural and multi-religious post-conflict setting and uses empirical data to question university governance concepts. She looks into the governance of universities in societies affected by armed conflicts, because they are either meant for practitioners or focused on the role of universities for peace and development. She explores the role that civil wars played in university development and governance in Sudan with a particular focus on Southern Sudan after the peace agreement of 2005 and before its secession in 2011.⁴⁴ One of the challenges hindering access to education in South Sudan is armed conflict. This research seeks to analyse these challenges and recommend solutions to curb this problem.

Shrileen Jejeebhoy's book noted that the Government of Sudan has made great efforts in increasing access to education for children in Northern Sudan across education sub-sectors over the past decade. In particular, educational access for children in areas previously affected by conflict has improved substantially since the signing of the peace agreements of 2005 and 2006.⁴⁵ Estimates suggest that, on average, 90% of all children in northern Sudan had access

⁴⁰Davies, L., *Education and Conflict: Complexity and Chaos* (Routledge, 2003) 12.

⁴¹ UN Convention on the Rights of the Child, 1989, article 28.

⁴²Breidlid, A.K., *A Concise History of South Sudan*, (African Books Collective, 2010) 20 – 27.

⁴³Babyesiza, A., *University Governance in (Post-) Conflict Southern Sudan 2005–2011: The Nexus of Islamism, New Public Management and Neopatrimonialism Organization and Public Management* (Illustrated Publisher Springer, 2014) 11 – 19.

⁴⁴ibid.

⁴⁵Shrileen Jejeebhoy, *Women's Education, Autonomy, and Reproductive Behaviour: Experience from Developing Countries* (OUP, 1995) 23.

to a formal school in 2010. However, inequalities in access to schooling by gender and location continue to persist. There continues to be regional disparities in access to education by children in rural areas, with girls facing the greatest disadvantage in accessing education.⁴⁶ The challenges relate not only to reducing these inequalities but in improving the efficiency of the education system to produce young adults equipped with the skills and knowledge to secure their livelihoods and contribute towards society. If northern Sudan is to achieve its target of education for all, it needs to focus not only on enrolling all children but on keeping them in school and creating an environment which facilitates learning.⁴⁷ The critical constraints facing the efficiency of the system in northern Sudan includes: a large number of drop-outs both at basic and secondary levels; ineffective deployment of teachers across schools (and the inability to attract teachers to remote schools); insufficient resources (particularly textbooks) for children in schools; and inadequate instructional time. The critical risks facing the education sector include a contraction in public spending -due to the heavy reliance of the country on oil revenues- resulting in reduced transfers to the states and the lack of alignment between the educational needs of a state and the resources provided.⁴⁸ However, while this book explores the status of the education sector in Sudan in general, this research will focus on South Sudan.

1.9.3 Right to Education for Women

Jejeebhoy's book, provides an in-depth look into women's access to education, which has been recognized as a fundamental right.⁴⁹ It has been noted that educating women results in improved productivity, economic development as well as better quality of life. The personal benefits that women attach to education vary widely according to region, culture, and level of development, but it is clear that education empowers women, providing them with increased autonomy and resulting in almost every context in fewer children. This research handles the legal framework governing the implementation of the right to education.⁵⁰ Such a legal framework also encompasses the right to education for women.

Teresa Castro in her article⁵¹ presents an updated overview of the relationship between women's education and fertility. She examines data from the demographic and health Surveys

⁴⁶ Ibid at 24.

⁴⁷ Ibid at 33.

⁴⁸ World Bank, 'The Status of the Education Sector in Sudan' (2011).

⁴⁹ Shrileen Jejeebhoy, *Women's Education, Autonomy, and Reproductive Behaviour: Experience from Developing Countries* (OUP, 1995) 23

⁵⁰ ibid at p. 25

⁵¹ Martin Teresa Castro 'Women's Education and Fertility: Results from 26 Demographic and Health Surveys' (*Studies in Family Planning*, 1995) 187 – 02.

of 26 countries. The analysis confirms that higher education is consistently associated with lower fertility. However, a considerable diversity exists in the magnitude of the gap between upper and lower educational strata and in the strength of the association. In some of the least-developed countries, education might have a positive impact on fertility at the lower end of the educational range. Yet, compared with patterns documented a decade ago, the fertility-enhancing impact of schooling has become increasingly rare. The study also examines the impact of female education on age at marriage, family-size preference, and contraceptive use. It confirms that education enhances women's ability to make reproductive choices.⁵² The study however fails to outline how governments can implement this right to education. The current study seeks to address this gap.

Omwani Makudi noted that Kenya's development agenda had a functionalist orientation aimed at modernization⁵³ being the outcome of efforts to promote the development of education within Kenya, and which cannot be understood without an examination in the context of women. Although development agencies acknowledge the need for empowerment of women, interests of agencies of change are accommodated within the bounds of patriarchy, poverty, and paternalism. This situation is best explained by examining the education experience of women through a relative-change theory prism. From this perspective, change is actively pursued within limits, that is, options for change in the social, cultural, and political context are acknowledged but are limited. As a result, whatever education development efforts have been put into place to benefit women in marginalized situations has fallen short for the majority of women.⁵⁴ While this book is essentially about women education in Kenya, it will aid this study in drawing comparative analyses about the challenges facing the women in both countries and how to get a solution for those challenges. It follows that women, like men, have a right to education. In examining the implementation of the right to education in South Sudan, it will be also important to examine how the right has been implemented on the basis of gender.

1.9.4 Right to Education for Children

Rioux, Marcia, and Paula Pinto⁵⁵ view education as a right and as a development tool as found in international agreements, which include: the UN Covenant on Social, Economic and Cultural

⁵² *ibid.*

⁵³ Omwami, E.M., 'Relative-change Theory: Examining the Impact of Patriarchy, Paternalism, and Poverty on the Education of Women in Kenya' (2011). *Gender and Education* 15 – 28.

⁵⁴ *ibid.*

⁵⁵ Rioux, M.H., and Pinto, P., 'A Time for the Universal Right to Education: Back to Basics' (2010) *British Journal of Sociology of Education* 621 – 42.

Rights; the UN Convention on the Rights of the Child; and the UN Convention on the Rights of People with Disabilities. They discuss the limits and potential in each of these frameworks. They propose an alternative model as an approach to universal pedagogy, which incorporates the idea of a flexible curriculum and the development of literacy skills, accessible and applicable to students with different backgrounds, learning styles, and abilities. Qualitative data from an extensive study in a number of nations monitoring the rights of people with disabilities are presented to illustrate the arguments and provide the perspective of people with disabilities themselves about their experiences in schools.⁵⁶ The current study will examine these rights in the context of South Sudan.

The participation of children with disabilities in regular schools is often the prerogative of education boards, who decide whether a child can learn within existing educational environments, rather than pressuring for systemic change and the reorganization in school curricula that would grant the right of education to all children.

McCowan⁵⁷ presents a theoretical exploration of the question of universal right to education being enshrined in a range of international rights instruments, but not being fully implemented by State Parties, leading to a normative reassessment. Despite the considerable secondary literature on the subject, there has been little discussion of the notion of education underpinning the right. The article first assesses the expression of the right in the Universal Declaration of Human Rights, identifying limitations in its focus on primary schooling. Other candidates forming a basis for the right – namely learning outcomes and engagement in educational processes – are then assessed, and the latter is found to provide the most coherent foundation. Nevertheless, the positional benefits of formal schooling cannot be ignored. Consequently, a two-pronged expression of the right is proposed, involving access both to meaningful learning and to institutions that confer positional advantage.⁵⁸ The current study will seek to fill in this gap in knowledge by examining the right to formal education in South Sudan.

Krappman,⁵⁹ expresses concern that Human Rights Education (HRE) can give children the "impression that human rights are rights of adults and are mainly violated in faraway regions of the world. He argues specifically that "human rights are valid for children as well, that they

⁵⁶ *ibid.*

⁵⁷ McCowan, T., 'Reframing the Universal Right to Education' (2010) *Comparative Education* 509 – 25.

⁵⁸ *ibid.*

⁵⁹ Krappmann, L., 'The Rights of the Child as a Challenge to Human Rights Education' (2006) *JSSE-Journal of Social Science Education* 1, 5.

have a right to be educated about these rights and to claim these children's human rights".⁶⁰ The article does not, however, examine how governments implement this right, a gap that the current study seeks to examine in the context of South Sudan.

1.10 Research Methodology

This research adopted a qualitative, desktop review of literature. It involved the collection, analysis, and discussion of both primary and secondary sources.

The use of primary sources used entailed a study of: Constitutions of South Sudan, South Africa and Kenya; Acts of Parliament of South Sudan, South Africa, Kenya and their accompanying regulations. International instruments such as conventions, protocols and treaties also formed key primary source of information.

Secondary sources of information analysed included books, journal articles, theses and dissertations, newspaper reports and reports from international organizations on education in South Sudan.

1.11 Breakdown of Chapters

Chapter One:

This entails introduction, background to the study, statement of problem, research objectives, research questions, research hypothesis, theoretical framework, literature review, limitation and research methodology.

Chapter Two:

Provides an outline of legal framework governing the right to education globally, regionally and nationally for South Sudan nationals.

Chapter Three:

This chapter analyzes the challenges facing South Sudan citizens in accessing the right to education.

Chapter Four:

This chapter compares the status of the education in South Sudan to that of South Africa and Kenya with a view of recommending lessons for South Sudan.

⁶⁰ *ibid.*

Chapter Five:

This chapter concludes the study and provides recommendations on improving the state of education in South Sudan.

CHAPTER TWO: AN OUTLINE OF THE LEGAL FRAMEWORK ON RIGHT TO EDUCATION

2.0 Introduction

This chapter outlines the legal framework underpinning the right to education. This involves a consideration of the legal instruments meant to establish and promote the right to education, at the international level, regional level and national level. Education is a basic human right at all levels, internationally, regionally and nationally. This chapter makes reference to the numerous conventions and other sources of public international law applicable to the right of education at international level and which the republic of South Sudan is a party to. At regional level, reference is made to treaties, both multilateral and bilateral treaties concerned with the right of education within the African continent. Schedule A (25) of the Constitution of South Sudan places the exclusive responsibility of ratifying international, regional, bilateral treaties and conventions on the national government which comprises of the executive and the legislature. Article 57 (d) of the Constitution of South Sudan provides that the national legislative assembly is charged with the responsibility of ratifying international treaties, conventions and agreements. While Article 135 (5) (a) defines the role of the Minister of Justice to 'recommending approval' of treaties, international conventions and instruments to which the government is a party to. Collectively, and upon ratification, the international instruments become part and parcel of the South Sudan legal framework. This study focuses on those instruments that have been ratified as provided by the Constitution of South Sudan.

At the national level, reference is made to legal instruments in the republic of South Sudan, particularly the Constitution of South Sudan and other notable Acts of Parliament.

2.1 International Legal Framework

Universal Declaration of Human Rights of 1948

Several instruments have been formulated at the international level to address human rights, and among them the right to education, chief of these instruments being the Universal Declaration of Human Rights of 1948. South Sudan, being a member of the United Nations, is bound by the Universal Declaration of Human Rights, and is a constitutive element of the United Nations. At Article 26, the Universal Declaration of Human Rights enshrines the right to free basic education.⁶¹ It was drafted by representatives of different nations, and who possessed different legal and cultural backgrounds from across the world. It was proclaimed

⁶¹ United Nations, *Universal Declaration of Human Rights*, 1948.

by the United Nations General Assembly in Paris on 10th December 1948 as a common standard of achievement for all peoples and all nations.

The declaration enjoins all party states to ensure that fundamental human rights, including the right to education are universally protected. South Sudan being a member⁶² is therefore obligated to pursue the same objectives and ensure that the right to education is protected. Article 26 of the convention on the Universal Declaration of Human rights provides for right to education for every person. Sub article 1 specifically provides that:

“Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit.”⁶³

The foregoing provision touches on the fundamental aspects of the right to education, noting that access is paramount. The Party States have to take it upon themselves to ensure this right is pursued and achieved. This research turns the satellite on the state of South Sudan, seeking to find out the implementation of the right to education. A quick survey reveals that the state still lags behind in the realization of the right to education, as will be illustrated in the chapters ahead. The sector continues to suffer from many challenges especially triggered by the long periods of civil war and conflict.⁶⁴

International Covenant on Economic Social and Cultural Rights of 1966

The International Covenant on Economic Social and Cultural Rights⁶⁵ is another reference in reinforcing the recognition given to the right to education at the international level.⁶⁶ Article 13 of this Convention states that Partner States to the Convention recognize the right to education for everyone. Such an education is aimed at developing the human personality and the sense of its dignity. It also provides that education shall enable the person to participate freely in the affairs of the society by promoting understanding, tolerance, and friendship among the people of all nations. On this basis, the article proposes that primary education shall be free and compulsory for all children. Secondary education, on the other hand, shall be made

⁶² South Sudan became a member of the United Nations after its independence in the year 2011, being member number 193.

⁶³ UN General Assembly "Universal Declaration of Human Rights." *UN General Assembly* (1948).

⁶⁴ ‘South Sudan | Global Partnership for Education’ <<http://www.globalpartnership.org/country/south-sudan>> accessed 12 June 2017.

⁶⁵ The International Covenant on Economic, Social and Cultural Rights (ICESCR) was adopted by the UN General Assembly in 1966.

⁶⁶ International Covenant on Economic, Social and Cultural Rights (1966).

available and accessible in all its forms. Higher education shall also be made available and accessible by all, based on capacity and the introduction of free education by State Parties. Under article 14 of the Convention, a State Party which has not secured free primary education for its children at the time of becoming a Party is urged to put in place the requisite mechanisms to implement the right within two years of becoming a Party to the Convention. This Convention forms part of Sudan law, having been ratified and acceded to by Sudan on 18th March 1986. Nevertheless, at the time of carrying this research, South Sudan, despite being part of Sudan in 1986, had not formally signed nor ratified the Convention. It is therefore recommended that South Sudan ratifies this Convention because it houses the right to free primary education and a secondary and higher education that is accessible and available to all on the basis of capacity and the government plans to implement free education for its citizens.

International Covenant on Civil and Political Rights of 1966

The International Covenant on Civil and Political Rights further commits the parties to respect civil and political rights, including the right to life, freedom of religion, speech, assembly, electoral rights and rights to due process and a fair trial.⁶⁷ It was adopted by the General Assembly of the United Nations on 19 December 1966. Article 18 of this covenant provides that the States which are Parties to this covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.⁶⁸ However, the state bears greatest responsibility, and in this case South Sudan being a member state of the United Nations ought to shoulder this responsibility. Equally, although this Convention forms part of Sudan law, having been ratified and acceded to by Sudan on 18th March 1986, South Sudan, despite being part of Sudan in 1986, had not formally signed nor ratified it. It is therefore recommended that South Sudan ratifies this convention.

United Nations Convention on the Elimination of All Forms of Discrimination against Women of 1979

The Convention on the Elimination of All Forms of Discrimination against Women also comes in handy in this analysis of the international legal framework relating to the right to education. The Convention was adopted in 1979 by the UN General Assembly. It is described as an

⁶⁷ International Covenant on Civil and Political Rights (1966).

⁶⁸ International Covenant on Civil and Political Rights, 1966 article 18.

international bill of rights for women. The Convention defines what constitutes discrimination against women and sets up an agenda for national action to end such discrimination. Under numerous Articles, the convention emphasises the use of education as a basis of eliminating discrimination against women. It is key in the human rights legal framework of South Sudan, and was ratified by South Sudan's National Legislative Assembly on 3rd September 2014. UNMISS acting gender Unit Chief Ruth Kibiti was quoted praising this ratification as a step in the right direction. She said:

“The ratification of CEDAW is a demonstration of a positive measure of political will towards gender equality and ending discrimination against women and girls,” welcoming the development.⁶⁹

Agreeably, the ratification of CEDAW was a milestone in the efforts to guarantee the right to education for women in South Sudan. The existing culture in the state of South Sudan has been harsh for women and this partly explains the role of CEDAW. This is complicated by the dominance of customary law in the state.⁷⁰ The import of this is that the full achievement of the right to education for women is a journey that has only been began by the ratification of this important convention.

States Parties are enjoined to take all appropriate measures to eliminate discrimination against women in order to ensure equal rights with men in the field of education and in particular on the basis of equality of men and women.⁷¹

The same conditions for career and vocational guidance, for access to studies and for the achievement of diplomas in educational establishments of all categories in rural as well as in urban areas; this equality shall be ensured in pre-school, general, technical, professional and higher technical education, as well as in all types of vocational training.⁷² South Sudan has ratified this convention; however, women are still experiencing discrimination on access to educational facilities. The government should take full responsibility to rectify this situation.

United Nations Convention on the Rights of Persons with Disabilities of 2006

The Convention on the Rights of Persons with Disabilities and its Optional Protocol was adopted on 13 December 2006 at the United Nations the Convention entered into force on the

⁶⁹ Report, UN, mission in South Sudan (2014).

⁷⁰ *ibid.*

⁷¹ Convention on the Elimination of All Forms of Discrimination Against Women 1979.

⁷² *ibid.*, Article 10.

3rd May 2008. The Convention follows decades of work by the United Nations to change attitudes and approaches to persons with disabilities. It brings a new perspective in the protection of the rights of persons with disabilities, from viewing such persons as objects of charity, medical treatment and social protection towards regarding them as “subjects” with rights, who are capable of claiming those rights and making decisions for their lives based on their free and informed consent as well as being active members of society.

Under Article 11 of the State Parties to this Convention recognise the right of persons with disabilities to education. With a view to realising this right without discrimination and on the basis of equal opportunity, State Parties are obligated to ensure an inclusive education system at all levels as well as lifelong learning.⁷³ South Sudan has not ratified this Convention despite the existence of a gnawing need to protect many of its people in such category. Persons with disabilities have a right to education like any other person. This is an important Convention because it tasks State Parties to ensure that people with disabilities are not discriminated against on the basis of their disabilities when it comes to the implementation of the right to education. South Sudan is therefore urged to sign and ratify this Convention.

United Nations Convention on the Rights of the Child of 1989

The United Nations Convention on the Rights of the Child (CRC) adopted in 1989 further lays the ground for the right to education, with special reference to children needs. Importantly, it requires states parties to respect and ensure the civil, political, economic, social and cultural rights of children. The Convention provides for the realization of these rights by setting standards for health, education, legal, civil, and social services for children.⁷⁴

The Convention deals with the child-specific needs and rights. It requires that the nations that ratify this convention to act in the best interests of the child. The rights of children involves compliance with child custody and guardianship laws, right to own identity and to be to be raised by his or her parents within a family or cultural grouping, and to have a relationship with both parents, even if they are separated.

Relatedly, two optional protocols were adopted by the UN General Assembly. Article 1 and 2 of the first Optional Protocol on the Involvement of Children in Armed Conflict requires State Parties to ensure that children under the age of 18 are not recruited compulsorily into their

⁷³ Convention on the Rights of Persons with Disabilities, 2006, Article 24.

⁷⁴ Convention on the Rights of the Child New York (20 November 1989).

armed forces, and calls on governments to do everything feasible to ensure that members of their armed forces who are under 18 years do not take part in hostilities.

The United Nation Convention on the Rights of a Child (CRC) provides the right to education for every child.⁷⁵ It provides that primary education must be free while secondary education must be available to every child. Furthermore, this Article direct that discipline in schools must respect children's human dignity; and wealthy countries must help poorer countries achieve this.⁷⁶ Article 29 provides for the goals of education in the society: "Education must develop every child's personality, talents and abilities to the fullest. It must encourage the child's respect for human rights, as well as respect for their parents, their own and other cultures, and the environment."⁷⁷

CRC commits States Parties to make the principles and provisions of the CRC widely known to children and adults.⁷⁸ South Sudan ratified and acceded to this convention on 4th May 2015⁷⁹ and is therefore mandated to promote the right to education but many children have remained victims of civil war and conflict, violating their right to education.

2.2 Regional Legal Framework

2.2.1 The African Charter on the Rights and Welfare of the Child 1990

The African Charter on the Rights and Welfare of the Child, 1990, prominently promotes the right to education. This Convention entered into force in 1999⁸⁰ and it sets out a much broader and more comprehensive right to education than that provided for in the African Charter on Human and Peoples' Rights of 1981.⁸¹

Article 11 of the African Charter on the Rights and Welfare of the Child provides that every child shall have the right to education. The provision incorporates aspects of Articles 28 and 29 of the Convention on the Rights of the Child, in its outline on the aims of education, and it prescribes measures that states must take as part of their efforts to achieve the full realization

⁷⁵ Article 28.

⁷⁶, UN General Assembly. "Convention on the Rights of the Child." (2014).

⁷⁷ *ibid*, Article 29.

⁷⁸ *ibid*, Article 42.

⁷⁹ Human Rights Watch, "25th Anniversary of the Convention on the Rights of the Child" (November 2014).

⁸⁰African Charter on the Rights and Welfare of the Child, (adopted 11 July, 1990, entered into force 29 November 1999). OAU Doc. CAB/LEG/24.9/49 (1990).

⁸¹ 36 African Charter on Human and Peoples' Rights (adopted 27 June, 1981, entered into force 21st October, 1986). 1520 UNTS 217; 21 ILM 58 (1982).

of this right. The preamble of the Charter encapsulates the situation of the African situation as follows:

“that the situation of most African children, remain critical due to the unique factors of their socio-economic, cultural, traditional and developmental circumstances, natural disasters, armed conflicts, exploitation and hunger, and on account of the child’s physical and mental immaturity he/she needs special safeguards and care”.

Further, the Convention makes provisions that are unique to the realities of Africa, with regard to the historical, social and economic context of that region. For instance, Part 5 of Article 11 foresees that “a child who is subjected to schools or parental discipline shall be treated with humanity and with respect for the inherent dignity of the child”. Part 6 of the same Article indicates that states have the obligation “to ensure that children who become pregnant before completing their education have an opportunity to continue their education on the basis of their individual ability”. It should be noted that, unlike the International Covenant on Economic, Social and Cultural Rights, the Charter does not oblige States Parties to progressively introduce free higher education, pursue the development of a system of schools at all levels, and to continuously improve the material conditions of teaching staff.

The Charter describes the right to education in brief, together with an over-arching prohibition on discrimination based on race, ethnic group, colour, sex, language, religion, or political or any other opinion, national and social origin, fortune, birth or other status.

Since South Sudan became a member of African Union after its independence, it is subsequently bound by the common obligations of the African Union, including the African Charter on the Rights and Welfare of the Child.

2.2.2 Protocol to the African Charter on Human and People’s Rights on the Rights of Women in Africa

The Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa,⁸² guarantees comprehensive rights to women including the right to take part in the political process, to social and political equality with men, improved autonomy in their health decisions, and an end to female genital mutilation.⁸³ The member states to this Protocol are

⁸² Also known as Maputo Protocol.

⁸³ Protocol to the African Charter on Human and People’s Rights on the Rights of Women in Africa (2003).

mandated to take all appropriate measures to eliminate all forms of discrimination against women and guarantee equal opportunities for women and men.⁸⁴

All members States are mandated to take all appropriate measures to eliminate all forms of discrimination against women and guarantee equal opportunity and access in the sphere of education and training. This is in addition to the protection of women, especially the girl-child from all forms of abuse, including sexual harassment in schools and other educational institutions and providing for sanctions against the perpetrators of such practices. They are also called upon to integrate gender sensitisation and human rights education at all levels of education curricula including teacher training.⁸⁵

Article 12 of the Charter captures in detail, the right to education and training. Specifically, this article mandates state parties to guarantee equal opportunity for access in education and training institutions as well as to eliminate all stereotypes in textbooks and syllabuses. It goes to the extent of calling on the state parties to promote education and training for women at all levels and in all disciplines including science and technology. South Sudan, being a member of African Union is bound by this Charter.

2.2.3 African Youth Charter

The African Youth Charter (AYC) was adopted⁸⁶ on 2 July 2006 by the African Union Heads of States and Governments meeting in Banjul, Gambia. The Charter is a political and legal document which serves as the strategic framework for African States, giving direction for youth empowerment and development at continental, regional and national levels. The AYC aims to strengthen, reinforce and consolidate efforts to empower young people through meaningful youth participation and equal partnership in driving Africa's development agenda. The Charter targets education as one of the areas which the youth are empowered in.

Article 13 of the Charter lays emphasis on education and skills development for the youth in African countries. Particularly, it provides that every young person shall have the right to education of good quality.⁸⁷ This involves embracing multiple forms of education, including formal, non-formal, informal, distance learning and life- long learning; to meet the diverse needs of young people. The education of young people is to be directed to promotion and

⁸⁴ Article 4.

⁸⁵ *ibid*, Article 12.

⁸⁶ Following adoption in 2006, it was entered into force on 8 August 2009.

⁸⁷ Article 13.

holistic development of the young person's cognitive, creative and emotional abilities to their full potential.⁸⁸

State Parties are called upon to take all appropriate measures with a view to achieving full realisation of this right and in particular provide free and compulsory basic education and take steps to minimise the indirect costs of education. All forms of secondary education should be made more readily available and accessible by all possible means including being made free, progressively. State parties are also called upon to take steps to encourage regular school attendance and reduce drop-out rates as well as to strengthen participation and the quality of training in science and technology. South Sudan, being a member of African Union is bound by this Charter.

2.2.4 African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention)

This Convention addresses the plight of the internally displaced persons whose displacement is often caused by armed conflict, natural disasters and large-scale projects in Africa.⁸⁹ The Convention was adopted in October 2009 and entered into force on 6th December 2012. As of 2016 it has been signed by 40 and ratified by 25 of the 54-member states of the African Union.

It seeks to provide internally displaced persons, to the fullest extent practicable and with the least possible delay, with adequate humanitarian assistance, which includes education, and any other necessary social services.⁹⁰ South Sudan has continued to face a persistent problem of internally displaced persons, owing to the long-established civil war. And these internally displaced persons need proper education, which education has been negatively impacted by many years of conflict in the country.⁹¹

South Sudan has not ratified this Convention. It is therefore recommended for South Sudan to ratify and implement this Convention in order to improve education among the many internally displaced persons.

⁸⁸ African Youth Charter, 2006, Article 13.

⁸⁹ Beyani, C., 'Implementation of the African Union Convention for the Protection and Assistance of Internally Displaced Persons (IDPs) 2009 (The Kampala Convention) | Brookings Institution' <<https://www.brookings.edu/on-the-record/implementation-of-the-african-union-convention-for-the-protection-and-assistance-of-internally-displaced-persons-idps-2009-the-kampala-convention/>> accessed 12 June 2017.

⁹⁰ African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention), 2009 Article 9.2(b).

⁹¹ 'South Sudan | Global Partnership for Education' (n 3).

The Status of Ratified Instruments under the South Sudan Constitution

Article 9(3) of the Transitional Constitution of the Republic of South Sudan, 2011 provides that all rights and freedoms enshrined under international human rights treaties, covenants and instruments, ratified or acceded to by the Republic of South Sudan shall be an integral part of the Bill of Rights in Part Two of the Constitution. Article 43 of the Constitution further recognizes the commitment by the Republic of South Sudan to respect international law, treaty obligations, and promoting a just world economic order. Under article 57, the National Legislative Assembly has power to ratify international treaties, conventions, and agreements. Although article 3 of the Constitution provides that the Constitution is the supreme law of the land, it is clear from article 9(3) that laws that have been ratified by the Republic form an integral of the law of South Sudan. It follows that the instruments that the country has ratified are an integral part of the law of the land and must be implemented in accordance with the Constitution. The instruments relating to the right to education as discussed in this chapter are an integral part of the law of South Sudan and should not find problems in their implementation in the country as long as they adhere to the Constitution.

2.3 National Level

South Sudan is a young nation that has not been spared the brunt of social, economic and political challenges that are characteristic of developing nations. Its fledgling democracy is credited with constant political tension in the country which has reduced peace and stability to distant dreams. Implementation of fundamental rights faces an uphill task. This section considers the right of education as provided under the municipal laws of South Sudan.

2.3.1 The Constitution

The Constitution of the Republic of South Sudan, 2011, forms the overall legal framework for education and other policies and is the founding document for the new nation. The Right to Education ‘guarantees the access to education for all citizens without discrimination as to religion, race, and ethnicity, health status including HIV/AIDS, gender or disability’.⁹²

The Constitution further provides that Education is a right for every citizen and all levels of government are mandated to provide access to education without discrimination of any sort.⁹³ All levels of government are to promote education at all levels and particularly ensure free and

⁹²Transitional Constitution of the Republic of South Sudan, 2011.

⁹³ There should be no discrimination on any basis, including but not limited to religion, race, ethnicity, health status including HIV/AIDS, gender or disability.

compulsory education at the primary level as well as providing illiteracy eradication programmes.⁹⁴ While this right is enshrined in the Constitution of South Sudan, the reality speaks otherwise. The enforcement of the foregoing constitutional provisions remains a far cry from the expected.

Every child is protected from exploitative practices that may be hazardous to his or her right to education.⁹⁵ With the history of South Sudan, this provision addresses pertinent issues in the quest for the implementation of the right to education. The country has been marked by times of civil unrest which has crippled the education sector for a long time. Many young people have dropped out of school and others recruited into the fighting groups.

The constitution goes further to make provisions for education, science and culture. All levels of government are enjoined to promote education at all levels as well as mobilizing resources towards education and scientific research.⁹⁶ The government is also mandated by the constitution to guarantee freedom of scientific research in universities and research institutions.⁹⁷ This shows the extent to which the Constitution of South Sudan protects and upholds the right to education. From the foregoing, it can be observed that the constitution has adequately addressed education needs and the status of education as a right.

However, the status on the ground does not reflect the rosy picture painted by the constitution.⁹⁸ The country continues to face challenges in the implementation of the mechanisms put in place to achieve the right to education.

2.3.2 The Child Act 2008

This Act was enacted pursuant to the provisions of Article 57(2) read together with Article 85(1) of the Interim Constitution of Southern Sudan, 2005, the Southern Sudan Legislative Assembly. The purpose of this Act is encapsulated under Section 3, as to promote and protect the rights of children in South Sudan. With respect to the right to education, Article 14 paragraph (1) of the Act provides for the right to compulsory education. Paragraph two of same Article gives the right to education to every child with disability.⁹⁹

⁹⁴ *ibid* article 29.

⁹⁵ Article 17(1) (d)

⁹⁶ Article 38.

⁹⁷ Article 38 (2).

⁹⁸ Deng, L.B., 'Education in Southern Sudan: War, Status and Challenges of Achieving Education For All Goals' [2003] Background paper for UNESCO EFA Global Monitoring Report <http://w.sudanforall.org/sections/ihitiram/pages/ihitiram_issue4/luka_biong_deng.pdf> accessed 16 June 2017.

⁹⁹ Republic of South Sudan child act (2008) article 14.

2.3.3 Rights of Persons with Special Needs and the Elderly

The Constitution also recognizes the plight of persons with special needs and the elderly. All levels of government are mandated to guarantee the protection of the rights of persons with special needs as provided by the Constitution.¹⁰⁰

Higher Education in South Sudan refers to the education offered at post-secondary level. Higher Education Institutions are institutions where students are required not only to acquire knowledge but also contribute effectively in producing it as well as developing their critical faculties. There are eight government-sponsored universities in South Sudan. Five are currently operational while three are still at the project level. There are over 35 private tertiary institutions operating in South Sudan. There are no laws governing private sponsored higher education institutions in South Sudan. These are plans to regulate these institutions. There are also other tertiary institutions currently run by other line ministries. There are future plans to bring all post-secondary education under the supervision of the Ministry.¹⁰¹

The long-term vision of the government of the Republic of South Sudan, as stated in South Sudan Vision 2040, is “to build an educated and informed nation by 2040.” It is not, however, clear how the law takes care of the education of people with disabilities and also the elderly. In the absence of a law outlining how the elderly and people with disabilities should access education, this class of people feel discriminated against because they have a right to education under the Constitution and also under the instruments that South Sudan has ratified.

2.3.4 The General Education Strategic Plan (GESP) 2012-17

The GESP has been developed over a period of 3 years building on the first national education plan developed during the CPA period. The GESP is titled to Promote Learning for All ‘which emphasises the central role of learning – further underlined by giving first priority to improving the quality of education.

The GESP rests strategically within the four pillars of the national development strategy: Governance, Economic Growth, Social & Human Development and Conflict Prevention and Security.¹⁰² The first is to improve the quality of general education, which involves developing a national curriculum. Currently a uniform curriculum is lacking. This goal also involves the development and implementation of teacher development policy and standards, textbooks and

¹⁰⁰ *ibid* article 30.

¹⁰¹ Republic of South Sudan Ministry of Higher Education, Science and Technology Policy Framework.

¹⁰² *ibid*.

other learning resources, development and implementation of a common national school implementation framework and improvement of school management and leadership.

It also targets to improve assessment of learning in order to promote early childhood development. Attendance, retention and progression are key aspects targeted as well. This goal is also not lost on the need to promote all the main sports and cultural activities in schools.¹⁰³

The second goal focuses on increased access to general education system and the promotion of equity. It further focuses on construction, expansion and rehabilitation of more schools.¹⁰⁴ The third strategy focuses on promotion of adult literacy and functional skills, including the development of a national policy, strategy and standards for adult literacy. The fourth goal seeks to strengthen the capacity of the ministry, state ministries of education and county education departments while the fifth goal focuses on an increased funding for general education to support implementation of the General Education Strategic Plan, 2012-2017.

2.4 Right to Development as the Completion to Right to Education

2.4.1 Globally

The United Nations Declaration on the Right to Development (UNDRD), 1986 established the right to development. It declares the right to development as an inalienable human right belonging to both individuals and people collectively.¹⁰⁵ This right encompasses the following key elements: people-centered development, human rights-based approach to development, active, meaningful and free participation of the people, equity, non-discrimination and self-determination.¹⁰⁶ The UNDRD further imposes obligations on individuals, States and the International Community as well.¹⁰⁷

The Vienna Declaration reaffirmed the right to development as proclaimed in the UNDRD as a universal and inalienable right and an integral part of fundamental human rights.¹⁰⁸ It also stated that the universal nature of the proclaimed human rights and fundamental freedoms was beyond question, thus establishing the right to development as a proper human right.¹⁰⁹ The adoption of the 1993 Declaration reaffirmed the interdependence and mutuality of human rights

¹⁰³ *ibid.*

¹⁰⁴ *ibid.*

¹⁰⁵ 'Declaration on the Right to Development at 25' <<http://www.un.org/en/events/righttodevelopment/>> accessed 12 June 2017.

¹⁰⁶ See Articles 1,2 & 6 thereof.

¹⁰⁷ UN (n 42) at 4.

¹⁰⁸ Sengupta, A., 'Realizing the Right to Development' (2000) 31 *Development and Change* 553, 556-557.

¹⁰⁹ *ibid* 557.

and fundamental rights.¹¹⁰ The Declaration established the commitment of states to enforce human rights and UN Charter obligations on cooperation in development and eliminating obstacles to development which are tenets of the right to development.¹¹¹ It required of states effective cooperation in the realization of the right to development and the advancement of equitability in economic relations at the international level through alleviation of debt problems of DCs among other barriers.¹¹² The duty-bearers of this right as per Vienna were the states.

Further, Vienna established the human person as the subject of development.¹¹³ It reiterated the contention of the RTD proponents that the lack of development in parts of the world could be invoked to justify the advancement of the RTD. It invoked the RTD by recognising that the realization of all human rights and fundamental freedoms as interconnected with the RTD and thus international cooperation was immediately required for its realization.¹¹⁴ The obligation fell on states to treat the RTD as a HR whose enjoyment lay with states.

RTD was further strengthened by the Rio Declaration on Environment and Development, the Cairo Declaration of the International Conference on Population and Development, the Copenhagen Declaration of the Summit for Social Development, and the Beijing Platform for Action of the World Conference on Women.

Though not legally binding on States, the principles embodied in the UNDRD and expressed in the Vienna and Rio Declarations including self-determination, improvements in human well-being; participation; non-discrimination; cooperation among states and respect for human rights are found in other legally binding instruments such as the UN Charter and the International Covenants on Human Rights as well as in customary international law.¹¹⁵ Therefore, by monitoring the rights contained in the UN Charter and the respective Covenants by the relevant Monitoring Committees, the right to development approaches full realization.

¹¹⁰ Udombana, N.J., 'The Third World and the Right to Development: Agenda for the Next Millennium' (2000) 22 *Human Rights Quarterly* 753, 771.

¹¹¹ Sengupta, S., 'On the Theory and Practice of the Right to Development' (2002) 24 *Human Rights Quarterly* 837, 855.

¹¹² *ibid.*

¹¹³ Marks, S., 'Human Right to Development: Between Rhetoric and Reality, The' (2004) 17 *Harvard Human Rights Journal* 137, 151.

¹¹⁴ Bunn, I.D., 'Right to Development: Implications for International Economic Law, The' (1999) 15 *Am. U. Int'l L. Rev.* 1425, 1427.

¹¹⁵ United Nations (OHCHR) (n.41) at 5.

The UNDRD therefore provides a normative underpinning for a human centred approach to development where human rights and human development are embedded and reinforce each other conceptually and in practice helping secure the well-being and dignity of all people.¹¹⁶

Other UN agencies including the UNDP and the UNCHR have also developed the concept widely. The UNDP as the ‘in-charge’ of development has developed the crucial link between the goals of the UN Charter, which itself has nuances of the RTD, of peace, development and human rights.¹¹⁷ It now focuses on integrating human rights and sustainable development,¹¹⁸ also a concept of the RTD. UNDP works to fully realize the RTD, advocates for human rights as part of sustainable development and promotes good governance as critical to all development.¹¹⁹

All other agencies of the UN play a role in the implementation of the right and the UN Development Group is the coordinator in the efforts to coordinate the implementation of the right even beyond the UN system.¹²⁰ Other non-governmental organisations (NGOs) and bodies such as the World Bank have been engaged in consultation with working groups and the UNCHR to address concerns in human rights and development in order to implement the RTD.¹²¹ The RTD is also key feature in mandate of the High Commissioner for human rights and the UNGA directed the creation of a new branch within the office with the primary duty of promoting the RTD.

The UN has also established a follow-up mechanism for the RTD together with an open-ended working group assisted by an independent expert.¹²² The independent expert is tasked with examining ‘the theoretical aspects of the RTD, its amendment, extension and reformulation in the Declaration to make it more accessible to implementation and enforcement.’¹²³ The UNGA has furthered this by adopting a resolution ‘inviting the follow-up mechanism to consider the question of elaborating a convention [possibly binding] on the RTD.’¹²⁴ The possibility of a binding covenant is however unlikely with the politicization of debates on the RTD. However,

¹¹⁶ *ibid* at 7.

¹¹⁷ Bunn (n 57) 1437.

¹¹⁸ *ibid*.

¹¹⁹ *ibid*.

¹²⁰ *ibid* 1438.

¹²¹ Bunn (n 57).

¹²² *ibid* 1439.

¹²³ *ibid*.

¹²⁴ *ibid*.

Sudan has ratified all Vienna conventions part of United Nations but the development in South Sudan still behind specially development in education infrastructure.

2.4.2 Regional Perspectives of the RTD

2.4.2.1 RTD under the African Charter on Human and Peoples' Rights

The African Charter is the only supra-national human rights instrument that expressly recognizes the right to development as a legally-binding and enforceable right. The African Charter included this right as a human right long before the adoption of the Declaration on the Right to Development by the General Assembly.¹²⁵ The Preamble of the African Charter highlights the special emphasis given to the right to development by stating that it is 'essential to pay particular attention to the right to development as well as civil and political rights and social, economic and cultural rights which cannot be dissociated from each other.'¹²⁶

Article 22 of the African Charter protects the right of 'All peoples to their economic, social and cultural development with due regard to their freedom and identity and in the equal enjoyment of the common heritage of mankind.' Under this Article, States are enjoined, individually and collectively, to ensure the exercise of the right to development.¹²⁷ Similar provisions are included for specific groups in the African Youth Charter¹²⁸ and in the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa.¹²⁹ However, South Sudan is a member of African union but not ratified or signed this charter.

2.4.3 The Link Between the Development and the Right to Education

This section has outlined various instruments that discuss the right to development. It is argued that the right to development works in tandem with the right to education. For instance, article 26(2) of the Universal Declaration of Human Rights provides that education shall be directed to the full development of the human personality. Education shall also promote understanding, tolerance, and friendship among all categories of people. Put differently, education shall be structured in a manner that contributes to the development of the individual. An individual who is denied a right to education is consequently denied a right to development. Such a person will

¹²⁵ *ibid* 331.

¹²⁶ *ibid* 331.

¹²⁷ Article 22 African Charter.

¹²⁸ Article 10.

¹²⁹ United Nations Human Rights Commission Frequently Asked Questions on the Right to Development Fact Sheet No. 37.

remain ostracised from what happens around them and will therefore not contribute to the development of the economic, social, and cultural spheres of the country and the globe at large. For this reason, South Sudan will have granted its citizens the right to development by granting them the right to education.

2.5 Conclusion

This chapter gave an overview of the legal framework relating to the right to education in South Sudan. This chapter also established the legal link between development and the right to education. It is important to note that some of the important international instruments on the right to education have not been ratified to by the South Sudan government. It is therefore necessary to have all the international instruments on education ratified so that they become part of the law of South Sudan based on article 9 (3) of the Constitution.

Whereas the Constitution and the laws provide for the right to education, there are several challenges that stand on the way to the implementation of this right.¹³⁰ Chapter Three considers these challenges.

¹³⁰ The Republic of South Sudan Ministry of Education, Science and Technology Policy for Alternative Education Systems 2012.

CHAPTER THREE: CHALLENGES FACING ACCESS TO EDUCATION IN SOUTH SUDAN

3.1 Introduction

As mentioned in our introductory chapter, education is a fundamental human right and a major driver of personal and social development. All around the globe education is seen as the key to a better future, providing the tools that people need to sustain their livelihoods, live with dignity and contribute to society in a positive manner.

South Sudan, being the world's youngest country, attained her independence on the 9th July 2011. Two years later, war broke out in Juba and has continued to date. This conflict with the Republic of Sudan and between ethnic groups continue to pose threats to South Sudan's education sector.¹³¹ People have been forced to flee from their homes and seek refuge in the neighbouring countries. It is estimated that the year 2011, over 300,000 people were displaced in South Sudan as a result of the armed conflict.¹³²

A study conducted by the UN Special Envoy for Global Education indicates that South Sudan has one of the lowest school enrolment rates in the world.¹³³ Out of the 123 countries for which comparable data is available, South Sudan ranks second lowest. For secondary education, South Sudan is ranked the last out of the 134 countries listed. This report reveals a dire situation in South Sudan's education sector. The report further indicates that the odds of a child reaching school going age today making it through the education system and into higher education are less than one per cent, far below average for Sub-Saharan Africa.¹³⁴

Further studies show that there are approximately 1.3 million children of primary school-age (6–14 years) out of school. Only a minority of those entering the education system progress through primary and on to secondary school. Although dropout rates are high in the early grades, they further steepen in grades four and five. Looking across the primary school grades in the year 2010, there were 426,000 pupils in grade one and just 22,000 in the final year of secondary education.¹³⁵ This is indicative of a limited coverage of upper secondary and tertiary education, and wider weaknesses in basic education. There are just 25,000 students in higher education in a country of about 10 million people. While accelerated progress toward universal primary education is vital, South Sudan cannot build

¹³¹Brown, G., "UN Special Envoy for Global Education. Accelerating Progress to 2015: South Sudan."

¹³² *ibid.*

¹³³ *ibid.*

¹³⁴ *ibid.*

¹³⁵ *ibid.*

its future on primary education alone. The country needs teachers, doctors, health workers, engineers, and a civil service with the requisite skills to deliver effective administration.

Conflicts and insecurity are not the only challenges facing South Sudan's education sector. Others include, corruption and poor leadership, gender discrimination, poverty, poor infrastructure, and various curricula and human resource challenges. This chapter delves further into these challenges with the aim of laying their legal basis in order to improve the state of education.

3.2 Corruption and Poor Leadership in South Sudan

Corruption can be defined as the systematic use of public office for private benefit.¹³⁶ This has a significant impact on the availability and quality of educational goods and services, and on access, quality or equity in education.¹³⁷ Corrupt practices, such as the misappropriation of educational funds or asking for illegal school fees, can cause significant financial losses to a country's education budget and represent an unbearable burden for the world's poorest. Improving transparency and accountability and introducing anti-corruption measures is therefore of utmost importance to improve access, equity and efficiency in the education sector.¹³⁸

The government of South Sudan allocates a huge annual budget for the education sector but there is little to show for this investment. In the year 2012/13, a budget of SSP 6.7 billion was allocated.¹³⁹ This budget allocation was significantly increased in the year 2013/14, with the ministry disbursing a budget of SSP 17.3 Billion.¹⁴⁰ However, there has been a notable lack of progress in the education sector despite this level of investment mainly because of corruption and poor governance.

Further, corruption in education is among the most significant barriers to reaching the Millennium Development Goals (MDGs) and realizing the universal right to education. Corruption has had a negative impact on economic, political and social development of

¹³⁶ Bardhan, P., 'The Economist's Approach to the Problem of Corruption' (2006) 34 *World Development* 341.

¹³⁷ Radović-Marković, M., 'Corruption in Education: A major issue.' See also Hallak J & Poisson, 'Ethics and corruption in education (Policy Forum No. 15).' Results from the Expert Workshop held at the IIEP, Paris, France, 28-29 November, 2001. Paris: IIEP-UNESCO.

¹³⁸ IIEP UNESCO, 'Online Course tackles corruption in education.' <http://www.iiep.unesco.org/en/online-course-tackles-corruption-education-3379> accessed on 8th March 2017.

¹³⁹ South Sudan National Budgets ministry of finance.

¹⁴⁰ *ibid*

countries. It reduces the efficiency and quality of services, distorts the decision-making process and undermines social values.

The cost of corruption is high.¹⁴¹ The budget on education is often embezzled resulting in overcrowded schools with poor infrastructure, or no schools at all. Books and other learning materials are sometimes sold instead of being given out freely. This locks away children from poor backgrounds having in mind the high poverty prevalence rate in South Sudan. Universities and other institutions of higher learning have not been spared either. There is prevalent corruption affecting the employment of lecturers and enrolment of students. Consequently, the quality of education has been significantly reduced and there is little progress to be achieved.

Corruption in education has devastating impact on all the members of society, and especially those who are vulnerable and disadvantaged.¹⁴² The marginalized groups can hardly access the promise of educational opportunity.¹⁴³ They are denied the opportunity to realize their potential for common benefit. This goes against the principle of equality enshrined in domestic and international statutes that guarantee equality in the provision of education. In the long term, corruption negatively impacts the educational quality and learning outcomes. A study commissioned by the International Monetary Fund established that corruption is mostly associated with a greater cost and a lower quality of education.¹⁴⁴ The universities continue to churn out poorly trained professionals, posing a great risk to the general population.¹⁴⁵ In light of this, it is evident that prosecuting or preventing corruption in the education sector is therefore not just a matter of fairness but a fundamental safeguard of human lives as well.

Corruption in South Sudan's education system takes different forms. It can initially be divided in the key areas of planning, management and implementation, which contain opportunities to practice corruption in education in different spheres. Corruption in schools can include procurement in construction, shadow schools, ghost teachers and the diversion of resources meant to cater for textbooks and supplies, bribery in access to education and the buying of grades, nepotism in teacher appointments and fake diplomas and degrees, misuse of school grants for gain, absenteeism, and private tutoring in place of formal teaching.

¹⁴²Omar, A. and Gurgur, T., 'Does Corruption Affect Health and Education Outcomes in the Philippines?' Available at <http://papers.ssrn.com/sol3/papers> accessed on 8 March 2017.

¹⁴³ Transparency International, 'Global Corruption Report: Education.'

¹⁴⁴Sanjeev, G., Hamid, D., and Tiongson, E., 'Corruption and the Provision of Health Care and Education Services', Working Paper no. 00/116 (Washington, C: IMF, 2000).

¹⁴⁵Transparency International, 'Global Corruption Report: Education.'

When the procurement process is transparent, it ensures that those objectives are achieved in the most cost effective and efficient manner. When private individuals procure goods and services for themselves, they also aim at obtaining the best quality for the best price. However, this is not the case when public officials procure goods and services within corrupt environments.¹⁴⁶ For them, obtaining the best quality for the best price is not a primary concern. Instead, officials tend to maximise their access to bribes. As a result, procurement becomes a gateway to fraud and corruption. This occurs in various ways such as: the procurement of goods at prices over and above the current market prices, contract bidding and award processes are manipulated to favour complicit contractors, suppliers and consultants. Corruption in procurement in the education sector is no different from corruption in procurement in other sectors.

In low income countries such as South Sudan, public expenditure on education are especially significant compared to other public budget items. Expressed as a percentage of their total GDP, they are commonly twice as high as those on public health, and four times more than military expenditure.¹⁴⁷ For instance, the education budget in South Sudan for the year 2013/14 amounted to SSP 17.3 billion. Education is frequently the sector that has the greatest funds being disbursed to the greatest number of recipients at multiple levels, and therefore it is at great risk of leakage. These funds are usually filtered through multiple administrative layers and pass through the hands of a series of actors with little accountability increasing the risk of corruption.

In 2009, the UK Serious Fraud Office (SFO) was alerted to allegations of unlawful conduct by representatives of Macmillan Publishers' education division in East and West Africa through attempted bribery of officials overseeing a World Bank tender for educational materials in the newly independent state of South Sudan. Following extensive investigations by the SFO, an action was filed against Macmillan in the High Court of England and Wales. The High Court ordered Macmillan to pay a civil settlement of over US\$ 17.7 million in recognition of

¹⁴⁶ Arrowsmith, S., *The Law of Public and Utilities Procurement* (Sweet & Maxwell, Limited 2016).

¹⁴⁷ World Bank, 'Public funds spent on education exceed 4.4 per cent of GDP (2010)'. This figure compares to 2.1 per cent of GDP spent on public health (World Bank, 'Health Expenditure, Public (% of GDP)', 2009, available at <http://data.worldbank.org/indicator> accessed on 8 March 2017).

‘improper and unauthorized payments’ to local officials in its unsuccessful attempt to win the tender; and a 6-year ban on taking part in any World Bank tenders.¹⁴⁸

In the absence of a transparent, objective and fair criteria for the selection of educational leadership at the district level and the ministry, overwhelming practices of favouritism and nepotism, and bribes on these appointments have been witnessed.¹⁴⁹ This has led to the appointment of unqualified teaching staff and ultimately, incompetent professionals.

Article 46 (d) of the Constitution of South Sudan places as one of the roles of the citizen to ‘prevent and combat corruption’. However, Article 46 (d) is yet to be fully actualized in terms of the supporting legislation, and it’s a given that the South Sudan citizens are themselves victims and participants of the corrupt schemes within the sector.¹⁵⁰ The citizenry is often unable to check on the spiralling corruption that stifles the operations of the county. The creation of the Anti-corruption commission under Article 143 and 144 of the Constitution would have gone a long way in tackling corruption within the country. However, the commission, being a pawn of the corrupt leadership within South Sudan, remains understaffed, underfunded and therefore unable to carry on its mandated anti-corruption responsibility as had been envisaged.¹⁵¹

3.3 Poverty in South Sudan

South Sudan is expansive, largely rural, yet scarcely populated. Reports by the UNDP indicate that an estimated 83 percent of the population resides in rural areas.¹⁵² Despite being a well-endowed and potentially rich country with vast resources such as oil and gold, the youngest nation is still characterized by high levels of poverty and low illiteracy levels. Poverty is endemic with at least 80 percent of the population defined as income-poor and living on an equivalent of less than US\$1 per day.¹⁵³ More than one third of the population lacks secure

¹⁴⁸ The Guardian (UK), ‘Macmillan Ordered to Pay \$17m for Corruption in South Sudan’, 25 July 2011. See also, World Bank, ‘World Bank Applauds Action by the UK Serious Fraud Office in Relation to Bribery Charges against Macmillan Publishers Limited in an Education Project in Sudan’, press release no. 2012/038/INT, 22 July 2012.

¹⁴⁹ Algoyen, F., ‘Corruption in the public education system manifestations and goes out’ 2014.

¹⁵⁰ *ibid.*

¹⁵¹ *ibid.*

¹⁵² UNDP, ‘About South Sudan’ available at http://www.ss.undp.org/content/south_sudan/en/home/countryinfo.html accessed on 11th April 2017

¹⁵³ *ibid.*

access to food. The conflict, falling oil revenues and rapidly depreciating currency have further aggravated economic hardships in South Sudan.

The negative effects of poverty on education have been widely demonstrated. This is evident from the high illiteracy rates in South Sudan with illiteracy levels as high as 73% for adults.¹⁵⁴ Notably, 42% of the civil servants have less than primary education yet they are entrusted with affairs of the state without the necessary technical expertise. Only 27% of the population aged 15 years and above is literate.¹⁵⁵ Worth noting is the significant gender disparities: the literacy rates for males is 40% compared to 16% for females. This difference can be attributed to early marriages for girls who are forced to abandon their dreams of ever going to school. Difficult economic conditions contribute greatly to early marriage for girls. Many families experiencing hard economic times opt to marry off their daughters to wealthy men to cope with their financial difficulties upon payment of the bride price by the groom-to-be.

A report by the World Bank analysing the financial condition of South Sudan reveals the dire situation of the economy. In 2016, South Sudan experienced one of the world's highest inflation rates at 309%.¹⁵⁶ The South Sudanese Pound (SSP) depreciated on the parallel market from SSP 18.5 per dollar in December 2015 to reach almost SSP 80 per dollar by end September, 2016.¹⁵⁷ South Sudan is now in hyperinflation. This saw the annual inflation increase by 661.3% from July 2015 to July 2016 and by 730% from August 2015 to August 2016.¹⁵⁸ Food prices have increased placing many households in a deep financial crisis as they are unable to afford basic food for survival. The Ministry of Finance and Economic Planning (MOFEP) further revealed that the Central Bank has no reserves and the limited oil and non-oil revenues are spent on defense and security loans. The incidence of poverty has also worsened, from 44.7% in 2011 to 65.9% in 2015, with a corresponding increase in the depth of poverty.¹⁵⁹ To that effect, parents can't afford to take their children through school as it becomes a costly affair.

¹⁵⁴ *ibid.*

¹⁵⁵ World Bank, 'South Sudan'. Available at <<http://www.worldbank.org/en/country/southsudan>> accessed on 11th April 2017.

¹⁵⁶ UNDP, 'About South Sudan' available at <http://www.ss.undp.org/content/south_sudan/en/home/countryinfo.html> accessed on 11th April 2017.

¹⁵⁷ World Bank, 'South Sudan'. Available at <<http://www.worldbank.org/en/country/southsudan>> accessed on 11th April 2017.

¹⁵⁸ *ibid.*

¹⁵⁹ *ibid.*

3.3.1 The Impact of Poverty in South Sudan's Education System

South Sudan's National Ministry of Education, Science and Technology (MoEST) mission statement posits that the Ministry shall cherish education for all its people equally. It aims to provide an education that is relevant and affordable based on the needs and aspirations of the people to enable them to become productive and responsible citizens. However, there are many challenges facing the achievement of the Education for All (EFA) Goals, one of them being poverty. Researchers have established that hunger, a poverty related problem adversely affects student's learning and participation at school.¹⁶⁰ With a limited budget and high food prices, the South Sudanese government cannot afford to provide students with food though it would act as an incentive for children to go to school. Instead, they choose to remain at home in order to assist in fending for their families. This explains the low school enrolment rates recorded over the years.

As a result of the conflict, 866,000 school-aged children have been displaced from their homes to areas without access to protective learning spaces, or to host communities where education resources are non-existent or overstretched.¹⁶¹ An estimated 400,000 have dropped out. The government, owing to inadequate funds has failed in its duty to provide mobile learning options to such groups that are unable to attend formal school settings hence failing in achieving the EFA Goals. In addition, the aid system has not responded effectively to the challenge posed by displacement. Humanitarian appeals are seldom fully funded—and education is usually a peripheral concern in such appeals. The revised 2011–12 financing requirement for delivering education in emergencies was estimated at about \$40 million, with some 229,000 children needing support. By midyear, pledges received amounted to less than half of the request, with the slow disbursement of funds further delaying the implementation of projects.

Suffice to say that poverty has spread its tentacles in the education sector and left it crippled in many ways. Because of the prevailing poverty, there are inadequate numbers of qualified teachers, limited resources and poor infrastructure.¹⁶²

Following the country's financial crisis, South Sudan has been allocating 5 to 7 percent of its budget to education – one of the lowest in the world. Lack of funds has contributed greatly to

¹⁶⁰ White, M., 'Poverty and Education: A teacher's perspective'. Summary of the findings of the focus group research. A BCTF Research Report.

¹⁶¹ Ministry of Education, Science and Technology, Government of the Republic of South Sudan, 'Education for All (EFA) Review Report 2015.

¹⁶² Ibid.

inadequate access to educational facilities such as schools, learning materials and salary disbursements for teachers.

Further, infrastructural development has noticeably lagged behind. South Sudan's learning infrastructure leaves much to be desired. The classrooms are overcrowded and there is inadequate provision of textbooks.¹⁶³ Rising enrolment has placed strains on classroom availability. Currently, there is a ratio of 125 pupils to each classroom.¹⁶⁴ Despite the growing need for increased facilities, the requisite intervention has been lacking. The increased cost of construction has not made things better either, particularly due to exchange rate depreciation because of the high import content of the materials used.

Reports further reveal that payments to teachers have been disrupted. This may have led some teachers to leave the workforce in search of more reliable sources of income. Moreover, not all teachers are on the government payroll. It is estimated that the about 8,000 teachers work on an informal basis. These teachers are paid through school charges, which are in turn keeping many children out of school.¹⁶⁵

Relatedly, reports indicate that less than 5% of teachers in South Sudan have the skills to teach in school.¹⁶⁶ Approximately 3% of teachers have gone through either college or university education.¹⁶⁷ One third of South Sudan's teachers have only a primary school education. It follows then that fewer than half of the country's teachers have received training. This can be attributed to the low pay and lack of learning materials which make the training an uphill task. States such as Unity, Jonglei and Eastern Equatoria have recorded very low shares of qualified teachers in the workforce with a pupil/teacher ratio of 117:1. Government intends to curb this chronic shortage of qualified teachers in a bid to ensure that students benefit from a quality education.

¹⁶³Green, E., 'Challenges facing Education in South Sudan.' Available at <<https://banaa.org/2013/06/18/the-challenges-facing-education-in-south-sudan/>> accessed. On 11th April 2017. Reports show that students in South Sudan have to share books, and sometimes up to 9 students might be trying to read the same book.

¹⁶⁴ Brown, G., 'Accelerating Progress to 2015: South Sudan.' A Report Series to the UN Special Envoy for Global Education.

¹⁶⁵ Ibid

¹⁶⁶Green, E., 'Challenges facing Education in South Sudan.' Available at <<https://banaa.org/2013/06/18/the-challenges-facing-education-in-south-sudan/>> accessed on 11th April 2017

¹⁶⁷ Ibid

It is also costly to school in South Sudan. In war-torn South Sudan, economic activities have been compromised and farming activities halted.¹⁶⁸ The disruption of oil revenues has hit the country hard and created uncertainty over the government's financial capacity. Poverty levels have increased drastically with 80% of the population living on an equivalent of less than US\$1 per day.¹⁶⁹ Only elementary education is free for children aged 6 to 13 years. Most of the households in South Sudan are poor and cannot afford to educate their children any further. Without secondary education, these minors are left at home idle and with no means for economic survival. As a result, they are tempted to pick up arms for economic independence. Some of them are recruited as child soldiers.

Schedule (B) of the Constitution of South Sudan places the role of promoting education within South Sudan on the States. The conduct of pre-primary, primary and secondary education has been listed as under the powers of the States. Nevertheless, the Constitution does very little to promote free and basic education to all children in order to avoid the challenge of access to education occasioned by poverty. Like Article 29 of the South Sudan Constitution, Article 53 Constitution of Kenya 2010 lists education as a human right for a child, and has compelled the Kenyan government to provide education to all Kenyan children. It states that every child has a right to 'free and compulsory basic education'. This import from the Kenyan Constitution is necessary because it shows that the South Sudan laws lag behind in enforcing and providing compulsory education as a right of the South Sudan child, and fails to provide avenues where the free and basic education can be accessed by all, especially for the poor South Sudanese.

3.4 Insecurity in South Sudan

South Sudan gained independence in 9th July 2011 after signing a Comprehensive Peace Agreement with the North in 2005.¹⁷⁰ Despite the euphoria and sense of freedom that came with independence, South Sudanese citizens are still living in fear. The young state has been hit with multiple forms of violence, ranging from localized ethnic wars to urban crime and violence perpetrated by security forces. Decades of war have caused the killings of 2.5 million people. Foreign workers haven't been spared either. They are in constant fear of xenophobic attacks curtailing their business operations in the country.¹⁷¹ The people have lost faith in the

¹⁶⁸Tutkuay, K., 'Counting the costs: Secondary Education in Emergency in South Sudan.' Available at <<https://www.linkedin.com/pulse/counting-costs-secondary-education-emergency-south-sudan-tutkuay>> accessed on 11th April 2017.

¹⁶⁹ UNDP, 'About South Sudan.'

¹⁷⁰Jok, J.M., 'Mapping the Sources of Conflict and Insecurity in South Sudan: Living in fear under a Newly-Won Freedom.

¹⁷¹ Ibid.

security system of the country. Security forces have contributed tremendously to the rise of insecurity in South Sudan. It is reported that most reported crimes across the country are those known to have directly involved uniformed security services.

3.4.1 Impact of Insecurity in Education

Insecurity has adversely affected education in South Sudan. Parents fail to send their children to school and teachers are afraid to teach because of prevailing attacks.¹⁷² As a result, there has been an increasing number of school drop-outs. Several schools have been burnt down due to the ongoing cycle of violence and revenge killings. Teachers and students resorted to being freedom fighters whereas others fled the country and sought refuge in the neighbouring countries. Teacher training institutes and universities were closed down. About 1200 schools in war torn states such as Unity, Jonglei and Upper Nile have been closed down following the conflict.¹⁷³ Schools have ceased being safe havens as they have been destroyed, burnt down or used as shelters for armed groups.

Internal displacements are a common occurrence in South Sudan. People are forced to migrate to areas without the necessary infrastructure such as roads, water and schools. Reports indicate that 866,000 school-going children have been displaced and an estimated 400,000 have dropped out of school owing to the conflicts.¹⁷⁴ As from December 2013, the recurrent political crisis has caused the displacement of an estimated 1.9 million children, adults and youth.¹⁷⁵ The displaced communities' dreams of an education are shattered as they are forced to settle in places where learning institutions are virtually non-existent.

Insecurity comes with a ripple effect in the education sector.

First, threat of violence has held back several NGOs and International organizations from conducting their operations in war prone countries. These organizations have restrained sending their foreign personnel from travelling and working in those areas.¹⁷⁶ As a result, they are unable to monitor projects as they would like. In addition, humanitarian appeals for funding

¹⁷² Human Rights Watch, 'Lessons in Terror: Attacks on Education in Afghanistan: IV. The Indirect Impact of Insecurity on Education.' Available at <<https://www.hrw.org/reports/2006/afghanistan0706/5.htm>> accessed on 12th April 2017

¹⁷³ Jok, J.M., 'Mapping the Sources of Conflict and Insecurity in South Sudan.' The Sudd Institute. Special report Number 1.

¹⁷⁴ Ministry of Education, Science and Technology, 'Education for All Review Report 2015.'

¹⁷⁵ Ibid.

¹⁷⁶ Human Rights Watch, 'Lessons in Terror: Attacks on Education in Afghanistan: IV. The Indirect Impact of Insecurity on Education.' Available at <https://www.hrw.org/reports/2006/afghanistan0706/5.htm> > accessed on 12th April 2017.

have also been delayed. Following the displacement of thousands of children in South Sudan, the revised 2011-12 financing requirement for delivering education in emergencies was estimated at about \$40 million, with some 229,000 children needing support. By midyear, less than half of the amount pledged was received, with the slow disbursements of funds further delaying the implementation of projects.¹⁷⁷

Second, many schools were either closed down or destroyed in South Sudan during the war. The remaining schools are either too far or inaccessible due to the state of roads. Parents also fear that their children may encounter bandits on their way to school. Security problems may increase the cost of education, such as making it necessary to pay for transport. With the prevailing poverty levels in South Sudan, parents cannot afford to pay money for transportation. The situation was worsened when Minister of Education, in a bid to secure learning resorted to relocate those schools affected to safe places. Following inter-clan clashes that erupted in March 2015, 19 primary schools were amalgamated and moved from rural areas to Rumbek town for their safety.¹⁷⁸ As a result, school going children in rural areas have to travel for long distances before getting to the nearest school.

Third, experienced and professionally trained teachers in South Sudan are in short supply. There are about 28,000 teachers in the country with a third of them only having a primary school education.¹⁷⁹ The average student to teacher ratio in 2012 stood at 52:1 – one of the highest in the world.¹⁸⁰ The situation is aggravated by insecurity which makes teachers unable or unwilling to travel or live. Skilled workforce from other countries are in constant fear of harassment and other xenophobic related attacks. East Africans conducting business in the country have expressed concerns that they are targeted by members of the state security forces and local youths who accuse them of stealing their jobs even if these youths never held jobs.¹⁸¹ This trend of xenophobia is a dangerous development that South Sudan, as a new country whose citizens are hosted by neighbouring countries must work to counteract. The young state will continue to need the skilled labour force from these countries to contribute to technical

¹⁷⁷ Brown, G., 'Accelerating Progress to 2015: South Sudan.' A Report Series to the UN Special Envoy for Global Education.

¹⁷⁸ Sudan Tribune, 'Growing insecurity disrupts education in Rumbek.' Available at <<http://reliefweb.int/report/south-sudan/growing-insecurity-disrupts-education-rumbek>> accessed on 12th April 2017

¹⁷⁹ Brown, G., 'Accelerating Progress to 2015: South Sudan.' A Report Series to the UN Special Envoy for Global Education.

¹⁸⁰ Ibid.

¹⁸¹ Jok, J.M., 'Mapping the Sources of Conflict and Insecurity in South Sudan.'

fields such as medicine, teaching, engineering etc., skills which South Sudanese have not had opportunities to acquire during war.

Fourth, poverty levels have risen following the insecurity that has plagued the world's youngest state. Reports indicate that 80% of the population lives on an equivalent of less than US\$1 per day.¹⁸² Business activities have been halted and agriculture discontinued due to the current state of unrest. The disruption of oil revenues has brought Sudan to a fiscal crisis; the country has recorded an inflation rate of 309%, one of the highest in the world. The Republic of Sudan imposed high transit fees and unilateral seizure of oil which led the Republic of South Sudan to close down oil production in 2012.¹⁸³ Food prices have in turn increased tremendously making it difficult for poor households to provide the minimum food basket. The construction of schools has become an expensive affair as most of the building materials have to be imported.

With a limited budget allocated to education, the rest is majorly spent to acquire weapons, armoury and other security related expenditure. South Sudan has been allocating just 5 to 7 percent of its budget to education, one of the lowest in the world.¹⁸⁴ Military spending on the other hand officially accounts for 28% of the budget. However, it is widely believed that more than half of the country's expenditure is spent on armed forces, one of the highest in the world.¹⁸⁵

The foregoing paints a rather bleak picture of how insecurity is a great concern to South Sudan to the extent of under-funding the education sector which should be of utmost importance. Education should be a major priority in a country such as South Sudan which is in dire need of elites to aid in the management of the State affairs.

Inasmuch as there are enough laws on the protection of the South Sudan's citizen, much as not been done to promote education during war time. The many laws on the improvement of the education situation, among them the Constitution and the Child Act, within South Sudan continue to remain unenforced owing to security considerations. Further, the Kampala Convention on the right of education to internally displaced persons stands unenforced as well.

¹⁸² UNDP, 'About South Sudan' available at http://www.ss.undp.org/content/south_sudan/en/home/countryinfo.html accessed on 11th April 2017.

¹⁸³ Brown, G., 'Accelerating Progress to 2015: South Sudan.' A Report Series to the UN Special Envoy for Global Education.

¹⁸⁴ *ibid*

¹⁸⁵ *ibid*

This being the situation, insecurity and perennial wars within South Sudan pose a persistent challenge on access to education.

3.5 Poor Infrastructure in South Sudan

Infrastructure can be defined as the umbrella term for physical, social, and economic structures and facilities that are the basis for the development of a community, society, or nation.¹⁸⁶ In education, infrastructure refers to the facilities or suitable spaces where learning can take place; the most basic of which are classrooms, learning, and school facilities.¹⁸⁷ However, education depends on a wider range of infrastructure beyond the classroom such as outdoor facilities, roads to the school, and access to water and electricity. Lack of such infrastructure or poor quality of infrastructure has negative effects on the education sector concerning the quality of education, the health of students, and class attendance.¹⁸⁸ Importantly, improving the educational infrastructure and overcoming the barriers to good infrastructure is a critical issue for most developing and least-developed countries given the lack of proper financing and poor economic and political priorities.¹⁸⁹

Research has shown that there is a link between the state of infrastructure and the quality of education delivered.¹⁹⁰ In South Sudan, the state of public infrastructure is wanting due to its position in an embryonic state. As such, roads are almost non-existent, classrooms are not enough, and there is a shortage of public utilities such as clean water and power. As such, the education sector in South Sudan suffers from the overall poor state of infrastructure in the nation. The right to education cannot be achieved without the necessary facilities and structures in place to guarantee that the quality of education meets the accepted standards. Without classrooms and trained teachers or proper roads to access schools, the education sector in South Sudan will continue to lag behind.

The world's poorest countries, with South Sudan one of them, required more than four million classrooms by 2015 to bridge the existing pupils-classroom gap.¹⁹¹ However, more

¹⁸⁶Snieska, V., and Simkunaite, I., 'Socio-Economic Impact of Infrastructure Investments' (2009) 63 *Engineering Economics*.

¹⁸⁷Educate A Child, 'Infrastructure' (*Educateachild.org*, 2017) <<http://educateachild.org/explore/barriers-to-education/infrastructure>> accessed 10 April 2017.

¹⁸⁸Ibid.

¹⁸⁹Hillman, A.L., and Jenkner, E., *Educating Children in Poor Countries* (1st edn, International Monetary Fund 2004)

¹⁹⁰Blackmore, J., et al, 'Research into The Connection Between Built Learning Spaces and Student Outcomes' (2011) 22 Department of Education and Early Childhood Development, East, Melbourne, Victoria, Au.

¹⁹¹ibid (n 2).

importantly, is the fact that most of the classrooms required are in the rural areas.¹⁹² In rural areas, children walk for hours on poor roads to attend schools some of which do not even have proper classrooms or adequate facilities. In such cases, the motivation of the children to go to school may be affected thus leading to dropouts. More so, in the case of girls who require proper toilets and sanitation facilities, the rates of dropout are high among the older girls after menstruation begins.¹⁹³ Therefore, if such cases of dropouts are to be reversed, countries such as South Sudan need to invest more in the development of both public and school infrastructure to provide a conducive learning environment.

3.5.1 The Impact of Poor Infrastructure in Education

Poor infrastructure affects the education sector in South Sudan in several ways. First, it leads to low enrolment, especially in primary and high schools. Without enough classrooms, principals are forced to turn away children once the capacity is reached. Moreover, poor facilities demotivate parents from sending their children to schools especially sending girls to school given their need for proper sanitary facilities. Second, poor infrastructure leads to low participation and class attendance. When pupils walk for hours to school every morning, they arrive tired and thus will not be productive in class. Further, in cases of rains or hot afternoons, most pupils do not attend class leading to high rates of absenteeism.¹⁹⁴ Third, the low number of classrooms leads to overcrowding and large class sizes. In South Sudan, the numbers of schools are few compared to the population of school going children.¹⁹⁵ Thus most of the classes are severely overcrowded with pupils and students sometimes from several classes in one class. Finally, poor facilities of classrooms or sanitary facilities pose a vital concern for safety and health of pupils. Dilapidated classrooms and lavatories risk collapsing during the rainy season posing a safety risk to students. Moreover, poor sanitation and overcrowded classrooms are a source of communicable diseases, and in the case of a disease outbreak, the risk of an epidemic is very high.

While most of the public infrastructure in South Sudan is in a poor state, several areas of infrastructure have a direct and significant effect on the nation's education system. These areas

¹⁹²Ibid.

¹⁹³Ibid.

¹⁹⁴James, B., and Barnaba, E., 'Examining the Contemporary Status of An Education System: The Case of The Republic of South Sudan' (ERIC - Education Resources Information Centre by the Institute of Education Sciences (IES) 2015).

¹⁹⁵ibid

include the state of classrooms and outdoor school facilities, the roads accessing the school, and the availability of energy and water.

About one-third of classrooms in South Sudan are taught in the open while a further 25% are taught in semi-permanent or basic classrooms.¹⁹⁶ Such outdoor classrooms consist of just a homemade blackboard nailed to a tree and pupils have to sit down on the floor or tree stumps. In most cases, classes rarely occur in the afternoon due to the hot afternoon weather. Moreover, the existing classes do not meet the safety standard to be classrooms given they are built with local materials and are at risk of collapse during rainy seasons.¹⁹⁷ As such, there is a shortage of regular classrooms capable of holding a sizable number of pupils adequately. Moreover, the few classes that are well built are in a dilapidated state and overcrowded leading to some parents to be scared of sending their children to school. Therefore, there is a shortage of more than 25000 classrooms in South Sudan and unevenness in the distribution of schools among states.¹⁹⁸

While much emphasis has been given to the need of classrooms, most schools lack essential outdoor facilities that are necessary for the full functioning of the school such as latrines, staffrooms, and storage facilities. Therefore, the quality of education is jeopardized because teachers do not have meeting places or even secure storage of teaching and learning materials. Only about 33% of schools have proper storage for equipment and materials.¹⁹⁹ Given that South Sudan is currently in a state of internal conflict, security of learning and teaching materials is important. Moreover, the ratio of children to latrines is very high. For instance, in the Bahr El Ghazal Region, it stands at one toilet for 200 pupils.²⁰⁰ Therefore, there is a clear lack of outdoor facilities that are required by schools whether day or boarding.

In South Sudan, the road networks are destitute and, in most cases, non-existent. Specifically, only around 2% of the road network is paved while during the rainy season of June to October, up to 60% of roads are inaccessible.²⁰¹ As a result of the poor roads, most of the school-going

¹⁹⁶Brown, G., 'Education in South Sudan: Investing in a Better Future'. The Office of Gordon and Sarah Brown 2012.

¹⁹⁷ibid (n 9).

¹⁹⁸ibid (n 9).

¹⁹⁹Brophy, M., 'Progress to Universal Primary Education in Southern Sudan: A Short Country Case Study for The EFA Monitoring Report.' United Nations Educational, Scientific and Cultural Organization, UNESCO 2003

²⁰⁰Ibid

²⁰¹Wade, L., 'Implementation of Integrated, Coherent and Coordinated Support to South Sudan by The United Nations System' (United Nations Economic and Social Council, ECOSOC 2014).

children have difficulties accessing schools. In particular, cases of long-distance walk every morning are common. However, the rainy weather sometimes makes road impassable leading to low attendance in the rainy months.²⁰² Furthermore, the long distance travelled by pupils leads to insecurity challenges. Due to lack of roads, sometimes children have to travel through forests and bushes to attend classes in areas where conflicts occur and thus risk being abducted or raped. More so, with girls, it is very insecure to travel even during the day. Ultimately, such insecurity on the roads leads to parents denying their daughters from attending school disadvantaging girls' education.

Moreover, the lack of proper roads affects the transport of materials and learning equipment to schools. Lack of navigable roads means that schools may not be accessible or it may take long to get the necessary teaching and learning materials such as stationeries to the pupils who need them. Research shows that schools need an adequate and timely supply of learning materials for them to function effectively. However, without such access, most teachers in South Sudan find themselves with a shortage of learning materials such as textbooks, papers, and writing materials in an already overcrowded class.²⁰³

There is a significant lack of a support mechanism for the education systems such as the utilities needed for schools to function. Importantly, availability of clean water and sanitation facilities is a challenge to most schools in South Sudan.²⁰⁴ Research by Brown indicated that only about half of schools have access to proper latrines and safe drinking water.²⁰⁵ While structures such as buildings are crucial to education, water is a basic need that needs to be accessed by all people at all times. Students cannot learn effectively without clean water to drink and to wash the classrooms. Further, sanitary facilities are crucial in maintaining good health of school children. A study by UN ECOSOC highlighted the challenge faced due to risk of transmission of water-borne and other communicable diseases especially during the rainy season.²⁰⁶

Concerning power, South Sudan's infrastructure is almost non-existence. Only about 1% of the population have access to electricity within a population of about 10 million people.²⁰⁷ As such, even in schools, power is almost entirely non-existent. Access to electricity affects the quality

²⁰²ibid (n 9).

²⁰³Ibid.

²⁰⁴Ibid.

²⁰⁵ibid (n 11).

²⁰⁶ibid (n 16).

²⁰⁷ibid.

of education children receive more so in the digital era of technology we live in. As such, without access to electricity, basic technology, such as computers, cannot be used in improving education in South Sudan.

Although the legal infrastructure to education exists, based on the Constitution, the Child Act, and the numerous international instruments on the right to education, the actual physical infrastructure and the qualified personnel to actualize the legal infrastructure is lagging. There is little that can be done in terms of creating laws to improve the physical infrastructural space on education, and on human development, but continuous attention by the government of South Sudan in prioritizing this area is necessary.

3.6 Various Curricula and Human Resources Challenges

A curriculum is defined as a documented plan for teaching or instructions that highlight the objectives for learning, the courses and subjects to be learnt, and how teachers will teach.²⁰⁸ In the context of education in South Sudan, the curriculum refers to the framework used by teachers to transfer the required skills, knowledge, and attitudes to learners.²⁰⁹ Moreover, the minimum standard for curricula in South Sudan requires that it to be culturally and socially relevant, linguistically relevant, and appropriate to the needs and context of learners.²¹⁰ As such, the national education curriculum in South Sudan is meant to provide quality education to all learners. However, this is currently not the case on the ground.

Up until 2015, there was no standard curriculum to be used in all schools and colleges in South Sudan.²¹¹ Most of the schools relied on curricula from neighbouring countries such as Sudan and Uganda for curriculum and textbooks. Further, due to the lack of a curriculum, there was no defined language of instruction which led to schools teaching in different mother tongue languages and Arabic.²¹² As such, the education sector was in a state of destitute. However, the new curriculum has given hope to a better future. However, it still faces numerous challenges given that the education system in South Sudan is still in its infancy.

²⁰⁸Shao-Wen, S., 'The Various Concepts of Curriculum and The Factors Involved in Curricula-Making' (2012) 3 *Journal of Language Teaching and Research*.

²⁰⁹Education Cluster South Sudan, 'South Sudan Minimum Standards for Education in Emergencies' (South Sudan Education Cluster c/o UNICEF South Sudan 2012).

²¹⁰Ibid.

²¹¹Maphalala, T., 'South Sudan Celebrates Its First Comprehensive Curriculum' (*Global Partnership for Education*, 2015) <<http://www.globalpartnership.org/blog/south-sudan-celebrates-its-first-comprehensive-curriculum>> accessed 9 April 2017.

²¹²Gichuhi, L., 'Provision of Education in A Post-Conflict Country A Case of South-Sudan' (2015) 2 *International Journal of Scientific Research and Innovative Technology*.

Curriculum development goes hand in hand with training and professional development of human resources capable of implementing and further development of the curriculum. In South Sudan, there is a glaring deficiency and lack of quality of human resources in terms of the low number of teachers and education personnel.²¹³ In South Sudan, the most glaring challenge is the gender imbalance in the teaching profession. Only about 12% of teachers are women in South Sudan.²¹⁴ Further, almost 90% of the teaching staff is undertrained or untrained.²¹⁵ Moreover, trained teachers are not deployed based on the number of students and the school levels. As a result, most of the schools lacked trained teachers in some subjects or even lack qualified teachers entirely. As such, there is an immediate need for more teachers and development of the teaching profession. The development of teachers is even more crucial than the acute shortage because it means that unqualified personnel who may not have completed their education are tasked with educating the next generation of leaders.²¹⁶

3.6.1 Curriculum and Language of Instruction

In 2015, South Sudan launched the first national education curriculum that was comprehensive and covered all education levels from Early Childhood Development to higher education.²¹⁷ As a result, South Sudan currently has a comprehensive new curriculum that fosters growth and development, peace and prosperity, harmony and justice with a strong foundation of South Sudan's rich culture and heritage. While the new curriculum is welcome and promising, it is beset by several challenges.

First, there is need to train teachers and harmonize teacher training with the new national curriculum.²¹⁸ Further, the training of teachers has been lagging behind as a result of years of conflict.²¹⁹ Given this lack of qualified teachers and the low numbers of trained teachers, the implementation of the new curriculum presents a significant difficulty to South Sudan. Secondly, the new curriculum presents a huge funding gap in implementation particularly in the development and distribution of new textbooks based on the new curriculum. Given that

²¹³Hewison, M., 'The Status of Teacher Professional Development in Southern Sudan'. United States Agency for International Development, USAID (2009).

²¹⁴'Girls' Education South Sudan, 'South Sudan Education Statistics' (*Girls' Education South Sudan*, 2012) <<http://girlseducationsouthsudan.org/south-sudan-education-statistics/>> accessed 9 April 2017.

²¹⁵Kim, H., et al, 'Seeing the Reconstruction of Primary Education in Southern Sudan Through EMIS 2006-2009' (Education Policy and Data Center and Systems Services Center, AED, UNESCO 2011).

²¹⁶Winthrop, R., and Kirk, J., 'Teacher Development and Student Well-Being: IRC's Healing Classrooms Initiative' (2005) 22 *Forced Migration Review*.

²¹⁷UNICEF, 'The Crisis in South Sudan: Investing in Education Strengthens Psychosocial Recovery; Promotes Integration and Peaceful Coexistence; And Builds A Nation.' (United Nations Children's Fund, UNICEF 2015).

²¹⁸ibid (n 29).

²¹⁹ibid (n 31).

there is a shortage of textbooks already in South Sudan, the new curriculum only complicates the situation as the already existing textbooks are obsolete and need to be upgraded.

Moreover, the Ministry of Education, Science and Technology highlighted the challenge of implementation of ECDE curriculum in South Sudan due to the lack of awareness of importance of ECDE by key stakeholders and the community at large.²²⁰ ECDE is a very crucial part of the education system that sets up children's education based on its foundational significance. In the new curriculum, the stakeholders have proposed that the first years of education be taught in mother tongue. However, the challenge posed is how to teach mother tongue to a children population with more than 63 different languages and dialects.²²¹ Moreover, more than half the population is under the age of 18 and thus is currently in need of quality education.²²² Such demographics have clear implications the effective implementation of the new curriculum which consists of mother tongue and English.

Second, there are significant language barriers. Language is a significant issue in the education system of South Sudan. Before the separation from Sudan, Arabic was the official language imposed in Southern Sudan and as such teaching was done in Arabic. Therefore, the majority of the educated population in South Sudan speaks Arabic.²²³ However, as a result of separation and independence South Sudan set English as the official language and thus English was mandated as the language of instruction.²²⁴ As a result, there is a significant lack of teachers with the proper English language skills in the education sector. Further, due to the language barrier, most teachers do not have access to in-service or pre-service training programs. As such, the growing lack of qualified teachers is widened further by the switch from Arabic to English.

Furthermore, the new curriculum has added new challenges to the already complex nature of the language of instructions in South Sudan. The inclusion of mother tongue as the language of instruction in the early years of education and use of English in later years provides a cause for concern. There is a need for training of teachers who are not only proficient in teaching in English but also in mother tongue for lower primary. Moreover, there is also need to have qualified teachers who can help children transition from mother tongue to English. Such

²²⁰Ministry of Education, Science and Technology, 'Education for All (EFA) Review Report 2015' (Ministry of Education, Science and Technology, MoEST, South Sudan 2015).

²²¹Ibid.

²²²ibid.

²²³ibid (n 31).

²²⁴ibid.

teachers are currently not there. Further, the current unfair distribution of education among states means that some communities have an unfair advantage over others. Given that 10 of the ethnic groups in South Sudan consist of nearly 80 of the population, there is risk for marginalization of the remaining communities in terms of education.²²⁵

There are no laws for standardizing education within South Sudan. It is proposed that a law setting the basic minimum curriculum requirement and language of instruction within the whole of South Sudan will go a long way in improving the quality of education. Kenya, for instance, despite having more than forty native languages, has chosen to use English and Swahili to promote and improve education. The curriculum within the Kenyan situation is equally standardised. This approach can be adopted into South Sudan through the relevant Acts of Parliament and their accompanying regulations.

3.6.2 Human Resource challenges

Numerous studies have shown that the academic and professional qualifications of teachers determine the quality output in education. Unfortunately, the education system in South Sudan is wanting with an inadequate number of academically and professionally qualified teachers. In primary schools, roughly 46% of the teachers possess a basic primary education, and 45% of the teachers have attended secondary schools.²²⁶ For instance, schools in the Lakes, Northern Bahr Ghazal, and Warrap states have the highest population of the primary school teachers who only attained a primary level education. In secondary schools, the situation is better with at least 53% of the teachers being graduates from universities and colleges.²²⁷

Teachers with professional qualifications in South Sudan are also few. Roughly 47% of the teachers are untrained.²²⁸ In primary schools, only 16% of the teachers possess pre-service training, and in secondary schools, only 12% of the teachers have training.²²⁹ The Ministry of Education, Science, and Technology (MoEST) has introduced programmes to deal with these low levels of academic and professional qualifications in South Sudan. It has recently launched the "National Teacher Education Strategy" to offer pre-service and in-service training for teachers. Under this strategy, two institutions will be established across the country; the

²²⁵ibid (n 38).

²²⁶ The World Bank, 'Education in the Republic of South Sudan Status and Challenges for A New System' (International World Bank for Reconstruction and Development 2012).

²²⁷ ibid.

²²⁸ ibid.

²²⁹ ibid.

Teacher Training Institutes (TTIs) to be located in each state and the Cluster Education Centres (CECs) in each county.²³⁰

There is a severe shortage of teachers. Due to the rising enrolment rates in primary schools, the number of teachers available is inadequate. As a result, the ratio of teachers to pupils remains significantly high thus hindering effective knowledge transfer. For instance, in Kodok Boys a primary school in Fashoda County, there are only eight teachers serving a population of 928 pupils.²³¹ In this school, the teacher/student ratio is 1:116, a figure that compromises the quality of education. More so, some teachers are forced to take up double-shifts to address the shortfall of inadequate facilities and teacher shortage.²³²

There is also a glaring challenge of gender disparities in teacher distribution. South Sudan's teaching staff is dominated by the male gender. Women consist of only 13% of the teacher population.²³³ In some states such as Central Equatoria, 80% of the teachers are male, and in Unity State, 95% of the teachers are male.²³⁴ This disparity can be attributed to the low school completion rate of girls due to the existing social, cultural barriers. However, the importance of female teachers cannot be understated. Female teachers act as role models for the young girls, and they offer positive psychological and social guidance to girls especially during puberty when most of them drop out of school.

Further, most teachers have limited knowledge and lack basic pedagogical skills. Before acquiring independence, schools in South Sudan were taught in Arabic. As a result, the large population of teachers has limited English skills. More so, because of lack of training, teachers lack pedagogical skills which are essential in conveying knowledge in a way that students can understand, remember, and apply. Pedagogical skills also involve class management skills and content-related skills. With limited knowledge and pedagogical skills, the quality of education being offered to children in South Sudan is poor.²³⁵

Teachers are also subjected to harsh teaching conditions. The International Labour Organization (ILO) identifies fair working conditions to include reasonable working hours and

²³⁰ *ibid.*

²³¹ UNICEF, 'A Report of the Study on Socio-Economic and Cultural Barriers to Schooling in Southern Sudan' (Ministry of Education, Science, and Technology 2008).

²³² *ibid.*

²³³ Ministry of Education, Science and Technology, 'Girls' Education Strategy for South Sudan 2015-2017' (Ministry of Education, Science, and Technology 2017).

²³⁴ *ibid.*

²³⁵ *ibid* (n 49).

fair remuneration. However, teachers in South Sudan are deprived of benefiting from fair working conditions as they are subjected to an enormous burden of teaching overcrowded classrooms and attending other administrative duties.²³⁶ More so, teachers' remuneration is relatively small that they hardly manage to meet their day to day needs. As a result of poor pay and low motivation, teachers opt for other better-paying jobs. This transit increases the teacher turnover rate which in turn undermines the right to education for the children in South Sudan.

Lapses and Failures to Uphold Professional Ethics by the Teachers have also been identified as a significant barrier. Although there are no studies that offer a qualitative foundation for misconduct among teachers, few educators, parents, and students have mentioned it as a barrier to schooling. There have been outcries among school girls that teachers make snide remarks against them while in school. Worst still, some teachers engage in illicit relationships with their students. It is reported that students who are involved in these illicit affairs end up losing interest in education altogether in preference for marriage. The worst effect, however, is that parents fear to send their children to school as soon as they become aware of such kinds of relations.²³⁷

There is little that can be done in terms of the laws to improve the human resource situation. The government, nevertheless, can be mandated to priorities the development of human resources within South Sudan meant to promote access to education. This can be done through staff development programs such as trainings and scholarships. The law on staff trainings and scholarships is yet to be structured and made to be in line with the educational needs of the country.

3.7 Discrimination against the Girl Child

Gender discrimination in education refers to the distinction, exclusion, limitation, or preference, which, being based on sex, impairs equal access to education.²³⁸ As the newest nation in sub-Saharan Africa, South Sudan is anchored at the bottom of the World's League of education not only because of the low access to education, but also due to the gender inequalities that loom in the education sector.²³⁹

²³⁶ *ibid.*

²³⁷ *Ibid* (n 49)

²³⁸ UNESCO, *Convention against Discrimination in Education* (United Nations Educational, Scientific and Cultural Organization, 1960)

²³⁹ Brown, G., *Education in South Sudan: Investing in A Better Future* (United Nations Educational, Scientific and Cultural Organization, 2011).

Although 60% of the population in South Sudan is made up of women, approximately 90% of women are illiterate, and 50% of the girls under the age of 18 are married.²⁴⁰ Currently, only 35% of the girls in South Sudan attend school. This value is attributable to the signing of the Comprehensive Peace Agreement in 2005, the Child Act in 2008 and the General Education Act in 2012 among other education policies that have prompted the increase in girls' enrolment. In 2006, only 265,833 girls had been enrolled in primary schools.²⁴¹ By the end of 2013, the enrolment of girls had nearly doubled with 510,599 girls being admitted into primary schools. This figure, however, was relatively low compared to boys who accounted for roughly 800,868 pupils in schools around the country.²⁴²

In South Sudan, for every ten boys joining a primary school, there are only seven girls.²⁴³ This figure, however, reduces as the pupils' progress towards completing primary school and joining secondary schools. Studies show that lower primary classes (Class 1-4) are usually well attended, but the dropout rates significantly increase as girls reach puberty in class 4 upwards²⁴⁴. By the time the pupils are completing primary school, very few girls proceed to the secondary schools, and in some cases, no girl candidates sit for the Kenya Certificate of Secondary Education (KCSE). This phenomenon is attributable to the existing gender inequalities in the South Sudan's education system that increases the likelihood of school dropouts among girls.

Education for girls is essential because it promotes stability, security, and survival at both the individual and family levels.²⁴⁵ Lack of access to formal education limits the ability of women to participate effectively in the political, economic, social, and cultural spheres of a nation.²⁴⁶ Without education, women cannot acquire the necessary skills and knowledge required to make informed decisions about their future. They cannot take an active role in the political and economic arena, a step that would significantly improve their quality of life.

More so, a survey conducted in 2006 titled "The South Sudan Household Health Survey" revealed that illiteracy and lack of education expose women to health risks such as HIV

²⁴⁰ Ministry of Education, Science and Technology, 'Education Statistics for the Republic of South Sudan' (Ministry of Education, Science & Technology (MoEST) 2015) <<http://www.southsudanemis.org>> accessed 10 April 2017.

²⁴¹ *ibid.*

²⁴² *ibid.*

²⁴³ Kavesu, B., *Children Discriminated Against in Southern Sudan* (Save the Children Sweden, 2007).

²⁴⁴ *ibid.*

²⁴⁵ Ali, N., *Gender and State building in South Sudan* (The United States Institute of Peace, 2011).

²⁴⁶ *ibid.*

exposure. The results of this survey showed that only 45% of women in South Sudan aged between 15 and 45 years had heard about HIV/AIDs and approximately 70% of all women knew about the three primary mechanisms of HIV prevention. Numerous studies have associated girls' education with lower rates of HIV/AIDs, lower child mortality, improved stability, higher education levels for the future generation, peace, and health, all factors that contribute to National development. In fact, a survey conducted by the World Bank in 2011 indicated that increasing secondary education among girls by only 1% resulted in an annual income increase of 0.3 % per capita.

3.7.1 Barriers to Girls' Education in South Sudan

Barriers to girls' education in South Sudan can be attributed to several factors. These barriers can be categorized into household and community-based barriers and school-based barriers.

3.7.1.1 Household and Community-based barriers

i) High Poverty Levels

Decades of conflict and upheaval in South Sudan have had an impact on the cost of living in homes throughout the country. This economic depravity has fuelled early marriages in South Sudan since girls are seen as a prospect to increase family wealth through marriage and bride price. More often than not, families try to escape poverty by marrying off their young girls in exchange for the bride price or other much-needed resources. Statistics released by UNICEF in 2013 reveal that approximately 52% of girls in South Sudan are married before they are age 18 years.²⁴⁷

Unfortunately, these financial conditions have promoted the prioritization of boys over girls when it comes to choosing which child will be enrolled in primary school. The costs associated with tuition fees, uniforms, exercise books, and other vital learning materials are considered to be exuberant. Therefore, girls are forced to stay at home carrying out household chores or participating in the family economic activity to contribute to the family's overall income and the education of their brothers. Sadly, girls who were fortunate enough to enrol into school end up dropping out either because of early marriages or because they spend long hours helping out with the house chores that they end up missing classes, performing poorly, and eventually dropping out of school.²⁴⁸

²⁴⁷ Ministry of Education, Science and Technology, *Girls' Education Strategy for South Sudan 2015-2017* (Ministry of Education, Science and Technology 2017).

²⁴⁸ *ibid.*

In an unusual manner of contemplation, South Sudan communities believe that early marriages are a form of protecting girls from pre-marital sex and unwanted pregnancies. They think that going to school increases the likelihood that a girl will get pregnant. More so, they believe that unwanted pregnancies affect the family honour and reduce the amount of dowry a family would receive. Consequently, a significant number of girls are denied their right to access education on an equal basis with boys.²⁴⁹

ii) Gender Norms and Peer Influence

At the international plane, South Sudan has ratified major human rights treaties, but at the community level, it is but a patriarchal society that is founded upon the subjugation of women rights. While male leaders enforce traditions, women are marginalized in the decision-making process, and they have no voice against early marriages. Since customs dictate that women stay at home as mothers and wives, girls develop a strong sense of obligation towards the family which in fact undermines their right to education. Aggregating this situation is the influence of peer pressure among girls in the same community. Teachers have indicated that peer influence dictates whether a student will continue attending school or drop out to be married.

3.7.1.2 School Based Barriers

i) Lack of Female Teachers

Apart from the chronic shortage of qualified teachers, there is a noticeable disparity between female and male teachers in South Sudan. Throughout the country, only 13% of the teacher population represent women. For instance, in Central Equatoria, 80% of the teachers are male, and in Unity State, 95% of the teachers are also male. Female teachers not only act as role models, but they represent an embodiment of positive psychological and social guidance for girls. While recognizing the need for capacity building among teachers, the government embarked on teacher training. However, only 47% of teachers are trained. Out of the 47%, only 6% represent female teachers, a situation that poses a challenge in promoting the support for the girl child's education.

ii) Lack of WASH facilities at schools

Studies show that 57% of schools in South Sudan have no access to latrines²⁵⁰. Schools that do have toilets suffer from poor maintenance because the latrines are not adequate to serve the entire school population. This lack of latrines and the inadequacy thereof undermines the right

²⁴⁹ *ibid.*

²⁵⁰ UNICEF, *UNICEF South Sudan Annual Report 2015* (United Nations Children's Fund, UNICEF, 2015).

of girls to access education on an equal platform with boys because girls at puberty feel that the latrines available to do not offer them the privacy they require. As such, they shy away from school and prefer to stay at home for roughly 4-7 days per month during the menstruation period. Compounding this challenge is the lack of sanitary towels.²⁵¹ Although the government, NGOs, and other charitable organizations have made efforts to distribute the sanitary towels, such efforts are yet to impact the lives of the larger population of girls across the country. As a result, girls waste a lot of time at home; time they would have spent furthering their knowledge in school. In some extreme cases, some girls do not report back after the menstrual period either because of house chores or being married off.

iii) Gender Based Violence (GBV) and related security issues

Gender Based Violence is a prevalent issue in South Sudan with 1/5th of the women having experienced GBV at one point of their lives.²⁵² GBV takes various forms including sexual harassment, sexual abuse, forced marriages, and corporal punishment among others. Due to the poor infrastructure and the few schools in South Sudan, children are forced to travel long distances to receive education, a situation that poses security risks to girls. Although there are no solid statistics on school-based GBV prevalence, there have been reports of boys and male teachers making snide remarks against girls while in school or during transit to and from school. More so, both girls and boys remain unprotected against Corporal punishment although it is expressly prohibited under the law.²⁵³ Research studies have proved that traumatic experiences have adverse effects on the learning capabilities. Students who have been exposed to violence depict high levels of emotional upset, disruptive behaviours, low school attendance, and overall poor grades.²⁵⁴

South Sudan, being a party to some of the most important conventions on access to education, such as the Convention on the Rights of the Child, and the Convention on the Elimination of all forms of Discrimination Against Women, needs to ensure that these conventions are implemented in order to deal with the barrier to education for the girl child, women, and other disadvantaged groups. What is lacking is not the legal framework, but the will to provide access to education to women, children and other disadvantaged groups.

²⁵¹ *ibid.*

²⁵² Njeri, M., 'The Girl has no Rights': Gender-Based Violence in South Sudan' (CARE International 2014).

²⁵³ Article 20, General Education Act, 2012 states that corporal punishment is prohibited and that any teacher who contravenes that provision is guilty of an offense and is liable to punishment by the law.

²⁵⁴ *ibid* (n 15).

Should these Challenges Impede Access to Education?

The challenges outlined here are corruption and poor leadership, poverty, insecurity, infrastructure, discrimination against the girl child, and human resource challenges. These are the biggest impediments to access to education in South Sudan. Can these challenges be addressed by the law so that the right to education can be smoothly implemented in the country? Article 29 (1) of the Constitution of South Sudan provides that education is a right for every citizen. The article continues to make it mandatory for all levels of government to provide access to education for all citizens without discrimination as to religion, race, gender, disability, health status, and ethnicity. Under sub-article 2, primary education shall be free and compulsory. The challenges outlined in this chapter should therefore not be allowed to impede the implementation of this right because the Constitution clearly states that South Sudan citizens shall be allowed access to education at all levels.

3.8 Conclusion

The challenges facing education in South Sudan have significantly contributed to the high illiteracy rates, poor quality of education, gender disparities and general under-development of the country's economy. Clearly, the government is faced with a daunting task of instituting reforms in the education sector. In doing so, the law remains a potent tool for bringing the much-needed change. There are legal solutions that can be formulated to address some of the burning issues which have been enumerated and elaborated in this chapter. Chapter four attempts to unearth these solutions by conducting a comparative analysis framework with South Africa and Kenya.

CHAPTER FOUR: COMPARATIVE ANALYSIS OF SOUTH SUDAN WITH SOUTH AFRICA AND KENYA

4.1 Introduction

In chapter three, this study analysed the various challenges that students in South Sudan are facing while accessing education. This chapter will proceed to examine the education systems in other Sub-Saharan countries in an attempt to provide benchmarks against which South Sudan can measure and resolve its educational challenges. In this analysis, the study will evaluate the education systems in Kenya and South Africa.

The Kenyan education system was selected as a comparator since it is based on the 8-4-4 system, a system that South Sudan has borrowed and as a result, it offers a practical point of comparison. Moreover, Kenya ranks best in skills and education in East Africa according to the World Economic Forum 2015.²⁵⁵ On the other hand, South Africa was selected as a comparator because it is one of the robust economies in Africa; it has high enrolment rates in primary school education at 92% and it has very high literacy levels (85% of the population is literate).

4.2 South Africa

4.2.1 The South African Education System

Since the early 1990s, the education system in South Africa has undergone numerous changes. After the country attained independence in the year 1994, there was a challenge to dismantle the legal framework that upheld separation by colour and race. There was also a need for equality and access in the education sector. In response to this, the government established the South African Qualifications Authority (SAQA) that was responsible for benchmarking educational qualifications in the country. Through SAQA, the education was divided into three phases: The General Education and Training phase (Grades 1-9), the Further Education and Training (Grades 10-12) and the Higher Education and Training phase (post-secondary education). The General Education and Training Phase is compulsory for all students in South Africa. Currently, the school system is governed by the Department of Basic Education (DBE) and the Department of Higher Education and Training (DHET).

²⁵⁵Leonardi, T., "Which Country Comes Top for Skills and Education?" *World Economic Forum* (2015) <<https://www.weforum.org/agenda/2015/05/which-country-comes-top-for-skills-and-education/>> accessed 14 May 2017.

Like other Sub-Saharan countries, South Africa still struggles with poverty, insecurity, HIV/AIDS, human resource challenges, and corruption issues. However, the country has managed to streamline its education system amidst these difficulties. Statistics reveal that 92% of children in South Africa have been enrolled in primary schools. 85% of the population is literate, and 98.3% of youths between the ages 15 and 24 are literate.²⁵⁶ These statistics indicate that the South African education system is offering quality education to its citizens. In this section, the project will analyse how South Africa has handled issues of corruption, poor leadership, poverty, and insecurity in the Education System to act as a pointer for South Sudan.

4.2.2 Corruption and Poor Leadership

Financial Accountability is the cornerstone of guaranteeing that funds allocated to schools are used for the individual purpose of advancing the best interest of students. The South African Schools Act of 1996 has made financial accountability a legal requirement, and as a result, corruption, mismanagement, and misappropriation of funds have legal consequences.²⁵⁷ The Act mandates the School Governing Bodies (SGB) with the duty of governing schools, a role which collectively includes school financial management. In financial management, the SGB is expected to establish a school fund, collect and control the resources, and ensure that the funds are disbursed exclusively for education purposes.²⁵⁸ Schools funds are collected from fees, government subsidies, donations, and fundraising. Under the Schools Act, the school must create a bank account where these funds are to be kept.

The Schools Act further directs the SGB to prepare a budget for each school year by following the guidelines issued by the Member of the Executive Council (MEC), table it and receive approval from the parents during Annual General Meetings.²⁵⁹ In preparing this budget, the SGB must elect finance committees comprised of people skilled in accounting and budgeting skills. The SGB or its delegated financial committee must maintain financial statements and records including statements of income and expenditure, trial balance sheet, and statement of assets in a manner that guarantees their accuracy. Further, the SGB is required to submit annual audited statements to the Department of Education within six months after the end of a financial

²⁵⁶ UNICEF, 'Statistics: South Africa' (*UNICEF Children's Rights & Emergency Relief Organization*, 2013) <https://www.unicef.org/infobycountry/southafrica_statistics.html#117> accessed 14 May 2017.

²⁵⁷ Section 36 and 43, South African Schools, Act No. 84 of 1996.

²⁵⁸ Section 16, South African Schools, Act No. 84 of 1996.

²⁵⁹ Mbatsane, P., 'The Financial Accountability of School Governing Bodies'. Master's Degree Dissertation, University of Pretoria, 2006.

year.²⁶⁰ These statements must be audited by a person registered as an accountant and auditor in terms of the Public Accountants and Auditors Act, 1991 (Act No. 80 of 1991).²⁶¹

Another key feature of the South African education system is the requirements for annual financial reporting.²⁶² In financial management, reporting is critical in accountability as it indicates how money is spent. The SGB is required to report to the state and the parents concerning the financial position of the school.²⁶³ To the state, the SGB is expected to submit annual audited statements to the Department of Education and for the parents; the SGB is supposed to report at the AGMs, avail the audited reports for their self-scrutiny, and issue circulars and newsletters on a regular basis.²⁶⁴

With regards to school leadership, South Africa has adopted procedures and processes that are followed in the selection of principals for school leadership and administration.²⁶⁵ As research has shown, school leadership is central to school achievement, and as a result, education systems should embrace sound leadership and adopt reforms in this regard. In South Africa, the School Governing Bodies have the mandate of selecting, interviewing, and recommending staff for appointment in the schools they govern on behalf of the state.²⁶⁶ The power to make recommendation may be annulled if: the SGB is guilty of not following the procedures prescribed for appointment by the Minister, if the SGB did not have due regard to the democratic values and principles enshrined in the Constitution of South Africa and if the board was unduly influenced to enter the appointment, promotion, or transfer.²⁶⁷

4.2.2.1 Lessons for South Sudan

The South Sudan's education system is still highly dependent on foreign workers, a situation that besets the country's control over leadership and accountability in education. With the enactment of the General Education Act in 2012, South Sudan took a step towards mainstreaming its school system. Like South Africa, South Sudan should adopt stringent financial management policies to ensure that corruption in public procurement,

²⁶⁰ Section 42, South African Schools, Act No. 84 of 1996.

²⁶¹ Section 43, South African Schools, Act No. 84 of 1996.

²⁶² Mgadla Xaba and Dumisane Ngubane, 'Financial Accountability at Schools: Challenges and Implications' (2010) 50 Journal of Education.

²⁶³ *ibid.*

²⁶⁴ *ibid.*

²⁶⁵ Sharon Mampane, 'Procedures and Processes Followed in The Appointment of Principals for School Leadership and Management' (2015) 42 Journal of Social Sciences.

²⁶⁶ *ibid.*

²⁶⁷ Elizabeth Keku, 'Curriculum leadership and management in selected schools in Limpopo Province' (PhD, University of Pretoria 2011).

mismanagement and embezzlement of funds is minimised, if not reduced. As a young country, South Sudan is still grappling with the issue of limited resources and, therefore, sound financial management policies in public funding will ensure that allocated resources are distributed equitably to promote education in the country.

To get rid of unfair appointments, South Sudan should enact transparent, objective and fair criteria for the selection of educational leadership at the district level and the ministry level. Like South Africa, South Sudan should develop leadership and integrity principles and set out legal consequences arising from unfair appointments, promotions, or job transfers. By adopting procedures and processes that should be followed in the appointment of principals for school leadership and management, the Ministry of Education, Science, and Technology (MoEST) will ensure that professionalism, transparency, and accountability is upheld.

4.2.3 Poverty

Like South Sudan, poverty in South Africa has, for the longest time, acted as a barrier to education for millions of children in the country. Statistics indicate that 63% of the children in South Africa (approximately 3,969, 000) live in poverty.²⁶⁸ Due to this high poverty index, many children fail to receive the services and the care they require such as education and health. Globally, South Africa is recognised as having the highest level of inequalities with regards to wealth distribution and education.²⁶⁹ However, the government has made strides to reduce this gap by adopting several education reforms including the various school funding policies.

Under the South African Schools Act of 1996, students from low-income families are exempted from paying tuition fees. The School Fee Exemption Policy operates to make the compulsory education in South Africa accessible to poor students. For a student to qualify for a full fee-exemption, the combined annual gross income of the parents should be less than ten times the annual school fees of the learner.²⁷⁰ Partial exemption applies to students whose parents' combined annual gross income is more than ten times but less than thirty times the annual fees. In 2006, the government released new Regulations Relating to the Exemption of Parents from Payment of School Fees that added new conditions for determining eligibility for fee exemption. In addition to the requirement of annual gross income, the SGB would also have to

²⁶⁸Pretorius, W., '63% Of Young SA Children Live in Poverty - Study' (News24, 2016) <<http://www.news24.com/SouthAfrica/News/63-of-young-sa-children-live-in-poverty-study-20160513>> accessed 14 May 2017.

²⁶⁹ *ibid.*

²⁷⁰ South African Schools Act: Exemption of Parents from the Payment of School Fees Regulations, 1998.

consider the number of school going learners who are supported by the caregiver. Moreover, children in the foster care system and beneficiaries of the Child Support Grant would be entirely exempt from paying school fees.²⁷¹ For the government to ensure that students benefit from this policy, schools are compelled to inform parents about the fee exemption policy. Apart from promoting school enrolment, this policy has increased equality and access to education because children from poor backgrounds can access fee-charging schools in resourced areas.²⁷²

In 2007, the government of South Africa adopted the No-Fees Schools as a funding policy under the Education Laws Amendment Act of 2005. This policy is founded upon the Quintile Ranking System which the government uses to determine the amount of funding to be allocated to schools. Schools are divided into five categories, namely Quintile 1 to 5 with the poorest schools falling under Q1 and the least poor in Q5.²⁷³ This classification is based on the national poverty table and the province ranking that analyses the catchment area of each school. About 40% of schools falling under Quintile 1 and Quintile 2 have the lowest poverty index, and as a result, the government has abolished school fees allowing students to attend those schools without paying fees. In return, the government sponsors the school expenses that were previously covered by the fees. Based on the Quintile system of ranking, the poorest schools receive the greatest per-student allocation based on the assumption that the least poor schools are capable of raising fees and thus they require less government support. Under this policy, 60% of the available resources are distributed to the poorest 40% learners.²⁷⁴ This policy only benefits children in Grades 1 to 9; high school students do not benefit from it.

Both the School Fees Exemption Policy and the No-Fees Schools Funding Policy have contributed to ending the marginalisation of learners from poor backgrounds in South Africa. The success of these policies can be seen from the 92% primary enrolment rates in South Africa. However, due to the threat of lack of government compensation, many schools are reluctant to implement these policies or to admit non-paying learners. Consequently, the government has introduced incentives to promote greater admission rates for students from poor backgrounds. If a school runs the no-fees policy, the Department of Basic Education (DBE) increases the grant that it offers such as a school to compensate for lack of school fees.²⁷⁵

²⁷¹ South African Schools Act: Regulations Relating to the Exemption of Parents from Payment of School Fees in Public Schools (Regulation 1052 of 2006).

²⁷² Katherine Hall and Sonja Giese, 'Addressing Quality through School Fees and School Funding'.

²⁷³ *ibid.*

²⁷⁴ *ibid.*

²⁷⁵ ETU.org.za, 'Education Policy: School Fees' (Etu.org.za, 2009) <<http://www.etu.org.za/toolbox/docs/government/schoolfees.html>> accessed 14 May 2017.

This incentive mostly targets affluent schools to prompt them to enrol more learners from low-income families. By 2008, the programme had benefitted 5 million students and 14,264 schools.²⁷⁶

4.2.3.1 Lessons for South Sudan

Poverty has significantly reduced access to education in South Sudan. There is need to develop programmes to ensure schools have adequate infrastructure, human resource, and as well as affordability of education. Like South Africa, the government of South Sudan should adopt programmes that subsidise the cost of education for both the parents and the schools. Adopting a no-fee system or a fee exemption policy or their equivalent would help reduce the marginalisation of learners from low-income families in South Sudan. Particularly, it would increase the enrolment rate of students into primary school and the progression rate into secondary schools and later into Institutions of Higher Learning. By offering grants or compensation to schools instead of school fees, the government of South Sudan would ensure that schools have adequate funds to provide the necessary infrastructure and pay the teachers.

4.2.4 Insecurity

For education to yield positive outcomes, learners and educators must feel safe in the school environment. Like other Sub-Saharan countries, the level of violence in South Africa has a significant impact on its education system. Statistics indicate that one-fifth of students in South Africa have experienced violence while in school. Out of those, 12.2% have been threatened with violence, 6.3% have been assaulted, 4.7% have been sexually assaulted or raped, 20% have experienced cyber-bullying and 4.5% have been robbed in school.²⁷⁷ Another aspect of insecurity in South Africa is road safety. With almost 70% of learners walking to school in South Africa, the likelihood of pedestrian accidents, urban crime, and ethnic wars occurring is significantly high.²⁷⁸ The government of South Africa has taken several measures to ensure that insecurity does not hinder the access of education in the country.

In 2015, the government adopted the National School Safety Framework (NSSF) as a management tool to guide learners, educators, and district and province officials responsible

²⁷⁶ *ibid.*

²⁷⁷ Gina, N., 'School Safety / Violence & Bullying in Schools; Quality Learning And Teaching Campaign (QLTC) Implementation: Progress Report | PMG' (Pmg.org.za, 2015) <<https://pmg.org.za/committee-meeting/21219/>> accessed 14 May 2017.

²⁷⁸ *ibid.*

for school safety.²⁷⁹ The NSSF identifies the kinds of violence that occur in the school environment and develops principles to guide schools on how to develop school violence prevention programmes. The Department of Basic Education (DBE) has also created a solid partnership (the Implementation Protocol) with the South African Police Service (SAPS) to curb crime in schools and the communities surrounding the schools.²⁸⁰ This partnership is implemented through the Directorate: School Safety and Enrichment Programmes and the SAPS Crime Prevention Component. The primary purpose of the Implementation Protocol is to create safe, caring, and Child-Friendly schools where teaching and learning occur without fear of harassment and other forms of violence.

In response to the rising prevalence of sexual abuse by educators, the DBE published the Guidelines for the Prevention and Management of Sexual Violence and Harassment in Public Schools in the year 2008.²⁸¹ These Guidelines define the nature of sexual violence and harassment while outlining the procedures that educators and administrators should follow to handle a sexual assault complaint. Moreover, the DBE has identified training, code of conduct, and educational materials as the major sexual violence prevention activities.²⁸² In the year 2008 and 2009, the DBE released educational materials referred to as the “Generations” aimed at increasing people’s understanding of the guidelines. In the year 2009, the DBE also conducted training for educators to raise awareness and train teachers, administrators and other educators on how to use the guidelines to curb sexual violence in and out of school. In the year 2010, the DBE released a handbook titled Speak Out-Youth Report Sexual Abuse that was targeting learners to educate them on how to prevent sexual abuse in school.²⁸³ This manual teaches students the procedures to follow when reporting instances of sexual violence and it emphasises that educators are legally obligated to report cases of sexual abuse to the police. Moreover, the handbook provides contact information that students can use to report an offence themselves directly.

The DBE has also addressed elements of physical infrastructure to increase security and safety in schools. Under the Guidelines Relating to Planning for Public School Infrastructure, every school should be surrounded by an appropriate fencing of at least 1.8m in height and all

²⁷⁹ Department of Basic Education, 'The National School Safety Framework' (Department of Basic Education 2015).

²⁸⁰ *ibid.*

²⁸¹ Centre for Applied Legal Studies, University of the Witwatersrand School of Law, 'Sexual Violence by Educators in South African Schools: Gaps in Accountability' (Cornell Law School 2017).

²⁸² *ibid.*

²⁸³ *ibid.*

buildings on the ground level should at least have burglar proofing.²⁸⁴ The guidelines also require that each school should have an arrangement on security guards as well as an alarm system. School buildings and other facilities such as the laboratories should conform to all laws relating to fire protection including the availability of fire extinguishers at the ratio of one extinguisher per every 150 square metres.²⁸⁵

4.2.4.1 Lessons for South Sudan

Since independence, ethnic wars and urban crime in South Sudan have adversely impacted the education system. Teachers and students cannot access schools due to insecurity, a phenomenon that calls for immediate action. Like South Africa, the government of South Sudan should consider establishing partnerships with the principal education stakeholders such as NGOs and other global bodies such as the UN to restore security and curb the violence caused by the military forces. Moreover, the government should develop a policy that addresses violence in school since sexual abuse, robbery, bullying, and assault among other forms of violence directly contribute to school absenteeism among learners and educators. In worst cases, violence leads to school drop-outs. The government of South Africa should also endeavour to develop guidelines on sexual violence to protect the girl child from abuse in and out of school. Like South Africa, the government of South Sudan should consider passing guidelines on schools' physical infrastructure to safeguard students' safety while in school.

²⁸⁴ *ibid* (n 28).

²⁸⁵ *ibid*.

4.3 Kenya

4.3.1 Education System in Kenya

The Education System in Kenya can be traced back to the 1700s with the coming of missionaries into the country. Since then the system has undergone significant changes with the introduction of the 7-4-2-3 system in 1967 to the adoption of the 8-4-4 system in 1984 which is now being replaced by the 2-6-3-3-3 system set to be implemented in 2018 across the country. With a budgetary allocation of approximately 339,924 million in the financial year 2016/2017, the education sector has taken measures to increase the total enrolment of students in primary school, the retention rate and the progression rate into secondary level and later into Universities and other Institutions of Higher Learning.²⁸⁶ In this section, this study will analyse how the education sector has managed issues related to gender disparities, poor infrastructure, curriculum and human resource challenges in Kenya.

4.3.2 Education infrastructure in Kenya

The Basic Education Act, 2013 guarantees basic education for all children in Kenya and as a result, the Government of Kenya has been on the forefront ensuring universal primary education for all. The introduction of Free Primary Education (FPE) in 2003 caused a significant increase in the enrolment of children to school. From 2005 to 2011 the enrolment in primary schools increased from 82.8% to 95.35% and school completion rate increased from 77.6% to 83.2%.²⁸⁷ After the introduction of FPE, the Ministry of Education, Science and Technology identified that schools faced inadequate infrastructure, shortage of permanent classrooms, infrastructure-inequality between low-income and high-income areas and poor existing infrastructure.²⁸⁸ As a result, various programs and initiatives were started to improve the conditions of infrastructure in Kenya.

4.3.3 How Kenya has resolved education infrastructure challenges

The Ministry of Education developed the Kenya Education Sector support Programme (KESSP) to run from 2005 to 2010 with the objective of attaining Education for All (EFA) by 2015, capacity building and improvement of physical facilities in disadvantaged areas.²⁸⁹ Through the School Infrastructure Improvement Programme (SIIP) branch of KESSP, the

²⁸⁶Ministry of Education, Science and Technology, '2017/18 – 2019/20 Education Sector Report' (MoEST 2016).

²⁸⁷Ministry of Education, Science and Technology (Kenya), 'Basic Education Programme Rationale and Approach 2013 - 2018' (Ministry of Education, Science and Technology 2014).

²⁸⁸Onyango, P., 'Effectiveness of Kenya Education Sector Support Programme Grants In Improving Infrastructure In Public Primary Schools In Nyamache District, Kenya.' (Master's Thesis, University of Nairobi 2012).

²⁸⁹ *ibid.*

ministry was able to construct 165 new primary schools, over 3500 new classrooms by 2010 and refurbishment of over 3500 primary school classrooms.²⁹⁰ The initiative was successful in setting the trend for educational infrastructure development in Kenya. Notably, Kenya is currently on course to meet the target of the pupil to teacher ratio (currently at 1:42 against a target of 1:40).

Moreover, before the enactment of the current Constitution of Kenya (2010), the Constituency development Fund (CDF) and the Local Authorities Trust Fund (LATF) had a significant impact on the improvement of education in Kenya, particularly in rural areas.²⁹¹ The LATF was established in 1998 to extend service delivery to the community through the Local Authorities while CDF was instituted in 2003 to address development projects at the constituency level.²⁹² Before the devolved government came into place, LATF and CDF funds were used to develop the education sector through the building of new classrooms, new schools and improvement of existing infrastructure. Such development was crucial as FPE led to higher enrolment rates that were unsustainable at the time. The CDF fund, in particular, had funded and completed more than 12,000 education projects around the country by the year 2010.²⁹³

Additionally, the Government of Kenya has identified school feeding programs as crucial tools to attain high retention of pupils in class. Specifically, in rural areas and the Arid and Semi-Arid Lands of Northern Kenya, school feeding programs have been beneficial to low-income communities where many pupils used to drop out due hunger and drought. Relatedly, research has shown providing food for students in schools result in higher enrolment and retention levels.²⁹⁴ The government has provided annual funding to the education sector to cater for feeding programs that promote balanced diets for pupils. Currently, the government allocated Kshs. 2.5 billion to support the program.²⁹⁵

²⁹⁰Njoka, E., et al., 'Towards Inclusive and Equitable Basic Education System: Kenya's Experience' (Association for the Development of Education in Africa (ADEA) 2012).

²⁹¹Centre for Devolution studies (CDS), 'Participation in Kenya's Local Development Funds: Reviewing the Past to Inform the Future' (Kenya School of Government 2015).

²⁹² *ibid.*

²⁹³ *ibid.*

²⁹⁴Were, M.B., 'The Influence of Low-Cost Boarding Primary Schools on Access and Retention in Arid and Semi-Arid Lands: A Case of Lomelo Division; Turkana County Kenya' (Master's Thesis, Kenyatta University 2014).

²⁹⁵Development Initiatives, 'A Summary of Kenya's Budget 2017/18 From a Pro-Poor Perspective: Factsheet' (Development Initiatives Poverty Research Limited 2017).

4.3.3.1 Developing education in marginalised areas

Despite the enactment of FPE, Kenya faces the challenge of inequality in the education sector with some counties having a better quality of education than others.²⁹⁶ Specifically, the marginalised ASAL region in Northern Kenya faces obstacles such as accessibility and retention derailing the achievement of Education for All (EFA). MoE has supported several formal and informal initiatives to improve access in the marginalised ASAL region. The EFA Global Monitoring Report noted that MoE supported low-cost boarding schools as a solution to providing education to nomadic families.²⁹⁷ Given that school facilities in arid areas of Kenya are in a poor state and schools far from the communities, the increased demand for education is unsustainable. Accordingly, boarding schools are a viable alternative due to the challenge of building permanent schools for nomadic communities. Moreover, as of 2010 MoE had supported fifty-one mobile schools in the ASAL region.²⁹⁸ Mobile schools offer children from nomadic pastoralist a chance at education while on the move. Mobile schools are also developed in conjunction with local communities, NGO's, and the church. As a result, they are tailored to specific communities and recognised by MoE thus receiving funding from the government.²⁹⁹

4.3.3.2 Roads accessing schools in Kenya

Research prepared for Office of the Prime Minister of Kenya in 2011 highlighted that physical access to schools in Kenya was higher than most peers with similar income levels.³⁰⁰ Further, it has been shown that distance could be an obstacle to school enrolment especially among girls more than boys due to security concerns.³⁰¹ As a result, Kenya has made significant strides to improve infrastructure as part of the Vision 2030 with the aim of creating accessibility to social amenities, schools being one of them. One of the highlights of the Kenyan Budget has been the larger share the government allocated to the infrastructure and education sectors. In the budget for the 2016/2017 fiscal year, the government allocated education about 124 billion and infrastructure 316 billion against a budget of 2 trillion comprising the largest share of the

²⁹⁶Abdi, A.Y., 'Education, Conflict and Development: The Case of Northern Kenya' (Master's Thesis, Institute of Education, University of London 2012).

²⁹⁷Ruto, S.J., Ongwenyi, Z.N., and Mugo, J.K., 'Educational Marginalisation In Northern Kenya' (Education for All Global Monitoring Report 2010, UNESCO 2010).

²⁹⁸ *ibid.*

²⁹⁹ *ibid.*

³⁰⁰Glennerster, R., et al., 'Access and Quality in the Kenyan Education System: A Review of the Progress, Challenges and Potential Solutions' (Office of the Prime Minister of Kenya 2011).

³⁰¹ *ibid.*

budget.³⁰² Such budgetary allocations have put a focus on the growth of both the education and infrastructure sectors and are indicative of the Kenyan government focus especially after the Kibaki government took over in 2003. As a consequence of the budgetary focus on these two key sectors, the infrastructure network in Kenya has grown in tandem with the growing education sector resulting in a higher rate of accessibility of schools.

4.3.3.3 Availability of water and sanitation facilities in schools

Despite Kenya being categorised as a country with scarce water resources, approximately 59% of the population has access to safe water.³⁰³ This percentage compares favourably to neighbouring East Africa countries and is a result of the continued government effort to achieve the water targets set out in Kenya's Millennium Development Goals (MDG's).³⁰⁴ Like most developing countries, Kenya faces a challenge of maintaining adequate water, sanitation, and hygiene (WASH) levels in schools. The biggest problem has been the productive collaboration of ministries that are involved in water and sanitation. Harmonisation of programs, services and funding between the Ministries of Health, Education and Water has resulted in slower growth than is required to meet the WASH goals set for Vision 2030. Nevertheless, Kenya has employed several initiatives to improve the state of water and sanitation facilities in schools.

The KESSP initiative on education infrastructure outlined the goal of scaling up school WASH facilities as a program to develop school infrastructure.³⁰⁵ The Government of Kenya, NGOs and private donors sponsored the project. Upon completion in 2010, KESSP had been able to construct more than 5000 new toilets, 577 water tanks and installed 179 water lines in various part of the country.³⁰⁶ The reason for the effectiveness of the program was the active collaboration between the government and other stakeholders in both funding and development of schools while funds were directly disbursed to schools. As a result, the program had a significant impact on WASH facilities across the country. Particularly, a collaborative effort

³⁰²Mbaka, J., 'Education, Infrastructure Take Huge Chunk of Sh2 Trillion Budget' (*The Star, Kenya*: May 2016) <http://www.the-star.co.ke/news/2016/04/30/education-infra-structure-take-huge-chunk-of-sh2-trillion-budget_c1342089> accessed 13 May 2017.

³⁰³Chesengeny, P.R., 'The Determinants of Accessibility to Water in Secondary Schools In Kajiado County, Kenya' (Masters Thesis, University of Nairobi 2013).

³⁰⁴ *ibid.*

³⁰⁵SWASH+, 'Kenya's KESSP School Infrastructure Improvement Program: An Assessment Of Roles And Responsibilities' (Sustaining and Scaling School Water, Sanitation, and Hygiene, Plus Community Impacts (SWASH+) program, by CARE International in Kenya 2011).

³⁰⁶*ibid* (n 36).

with NGOs and donors has been instrumental in providing WASH infrastructures such as latrines, water tanks, and hand washing stations, especially in rural areas.³⁰⁷

Moreover, while the building of infrastructure has been crucial, research shows that sustainability of the infrastructure posed a notable challenge due to the lack of capacity and funds.³⁰⁸ A study conducted in 100 urban and rural schools in Kenya found that neglect, disrepair and poor use resulted in most WASH facilities deteriorating with time. Consequently, schools that had benefitted from improved WASH infrastructure ended up returning to previous low hygiene standards.³⁰⁹ Therefore, the Kenyan government needs to allocate more funds to the maintenance of WASH in the annual budgetary allocation for schools.

4.3.3.4 Lessons for South Sudan

Kenya has employed Vision 2030 which has continuously focused on the education and infrastructure sectors in its development agenda. As a result, South Sudan can borrow from this framework of developing both infrastructure and education together to ensure that as school enrolment and the number of schools increases, so does accessibility, especially through road networks. Currently, the infrastructure system in South Sudan is destitute and cannot support the education infrastructure reforms that are needed.

Additionally, South Sudan can borrow from the KESSP initiative that was developed in Kenya in response to the challenges of FPE. KESSP was a strategic initiative targeted at school infrastructure improvement of both physical amenities such as classrooms and WASH facilities. Such a strategic program would fast track the development of education infrastructure such as classrooms, sanitary facilities and clean water tanks in South Sudan. Moreover, such a program succeeds as a result of collaborative efforts between the government, NGOs and local communities. A collaborative effort has the potential to increase the possibility of donor funding which the government of South Sudan may lack to take on the program in the short-term.

South Sudan can also learn from how Kenya has tackled education challenges in marginalised areas. MoE in Kenya has started initiatives such as mobile schools and low-cost boarding to help regions in the marginalised areas that are difficult to access, to have education. Mobile

³⁰⁷Alexander, K., et al., 'The Life-Cycle Costs of School Water, Sanitation and Hygiene Access in Kenyan Primary Schools' (2016) 13 International Journal of Environmental Research and Public Health.

³⁰⁸ *ibid.*

³⁰⁹ *ibid.*

schools are especially viable in South Sudan due to the lack of trained teacher, a significant nomadic population, and the ability to be specialised to community needs. Moreover, South Sudan can employ the transition program used by MoE, where mobile school head teachers work in collaboration with regular primary schools to transfer pupils who achieve the highest level in the mobile school.³¹⁰

4.3.3.5 Various Curriculum and Human Resource Challenges in Education in Kenya

In Kenya, teachers are hired, managed, and deployed by the Teacher Service Commission (TSC). Currently, there are over 300,000 teachers under TSC management.³¹¹ While more than 212,000 teachers are in the primary education sector, post-primary consists of 87,251 teachers.³¹² Therefore, there is a deficit of about 87,489 teachers.³¹³ In the last three years, the TSC has employed an additional 22,000 teachers with an extra 25,000 to be hired in the coming years to bridge the gap.³¹⁴ As a result, the teacher to pupil ratio stands at 42:1 which compares favourably with the expected Ministry of Education, Science and Technology's standard of 40:1.³¹⁵

a) Teacher Education and Professional Development

The growth in the number of teachers has presented challenges to the ministry in the form of professional development of teachers to meet the teaching qualities outlined by the ministry. One of the ways the Ministry of Education, Science and Technology (MoEST) has responded to this challenge is through engaging in public-private partnership geared towards Teacher Education and Professional Development (TEPD). TEPD has been developed as collaboration between the MoEST, USAID and the private sector. TEPD is a nationwide program implemented by the FHI360 organisation to provide teacher training based on international practice, enhance adoption of a Teacher Competency Framework by MoEST, provide education materials to teachers and the introduction of ICT and training to various schools

³¹⁰ *ibid* (n 46).

³¹¹ Republic of Kenya, '2017/18 – 2019/20 EDUCATION SECTOR REPORT' (Republic of Kenya 2016).

³¹² *ibid*.

³¹³ *ibid*.

³¹⁴ *ibid*.

³¹⁵ *ibid*.

around the country.³¹⁶ To date over 8,000 teachers and 32,000 current and future tutors have benefited from the TEPD program.³¹⁷

MoEST has also identified implementation of ICT as a means to enhance the quality of the education and teacher management services. During the 2015/2016 budgetary year, MoEST developed the Teacher Management Information System (TMIS) with the aim of enhancing the effectiveness of managing teacher data. This move is part of the ministry's goal to digitise all documents and files to upgrade the current electronic management system (EDMS) to a scalable system that is more effective and efficient. Furthermore, the ministry is in the process of developing an online reporting of Curriculum-Based Establishment (CBE) and teacher appraisal.³¹⁸ Therefore, ICT is set to be a significant contributor to teacher development in the coming years.

b) New Education Curriculum in Kenya

The Ministry of Education identified curriculum review as a development agenda in the education sector report of 2016.³¹⁹ Based on the on-going changes in the economic and social environment both in Kenya and globally, MoEST needed to review the curriculum in Kenya's education system. Moreover, the current 8-4-4 education curriculum was developed in the 1980s and has been criticised for being examination-centred rather than learner-centred. Therefore, the ministry of education through the Kenya Institute of Curriculum Development (KICD) has proposed changes from the 8-4-4 system to a new 2-6-3-3-3 which is touted as learner-centred and up-to-date with the twenty-first-century elements such as ICT.³²⁰ MoEST is currently piloting the new curriculum at the lower school level and it will roll out the program entirely in the year 2018.³²¹ The new curriculum will provide a skill-based learning platform, employ continuous assessment, and thus offer better quality in education.³²²

³¹⁶USAID, 'Teacher Education and Professional Development (TEPD)' (*Usaid.gov*, 2013) <<https://www.usaid.gov/kenya/fact-sheets/teacher-education-and-professional-development-tepd>> accessed 14 May 2017.

³¹⁷ibid.

³¹⁸ibid (m 57).

³¹⁹ibid.

³²⁰Wanzala, O., 'New Education System to Start in May' (*Daily Nation*, 2017) <<http://www.nation.co.ke/news/education/education/2643604-3782408-14o33xxz/>> accessed 14 May 2017.

³²¹ ibid.

³²²Kajilwa, G., 'How New Curriculum Will Change Old Ways of Class Teaching and Learning' *The Standard*, 2017. <<https://www.standardmedia.co.ke/article/2001227870/how-new-curriculum-will-change-old-ways-of-class-teaching-and-learning>> accessed 14 May 2017.

4.3.3.6 Lessons for South Sudan

South Sudan can learn from the public-private partnership programs employed by the Ministry of Education, Science, and Technology in Kenya in training and professional development of teachers. Currently, South Sudan lacks trained and qualified teachers while professional development is almost lacking. Based on the current poor state of teacher numbers and quality, development of a program similar to TEPD can be a significant step in teacher training and development. Moreover, MoEST in South Sudan can benefit from the added advantages of public-private partnership programs such as funding which can free up additional funds for developing other weak sectors in education.

Additionally, the new 8-4-4 curriculum developed by South Sudan, which is similar to Kenya's current curriculum, should be overhauled before the education sector takes route. The situation in Kenya has identified that the 8-4-4 curriculum, while adequate, struggles to meet the dynamic challenges of twenty-first-century education. Given that South Sudan education sector is still in its infancy, development and deployment of a current and skill-based curriculum should be a goal of MoEST. As Kenya is moving towards a new curriculum better than the 8-4-4 system, South Sudan should not make the mistake of developing the curriculum in their education sector owing to the challenges Kenya has faced with the 8-4-4 system.

c) Discrimination against the Girl Child

Over the years, the total enrolment of the girls into primary schools has been increasing with the national Gross Enrolment Ratio (GER) among girls rising from 89.7% in 1999 to 109.9% in 2010. In 2011, the total enrolment of girls had increased by 1.6% and by 2013 4.9 million girls had been enrolled in primary schools.³²³ Indeed, the Kenyan government is making strides to close the gender gap that has continued to hinder equal participation of girls in education. These efforts have been recognised globally and in 2016, the African Human Development Index (HDI) ranked Kenya in position 18 in Africa and 145 globally with regards to its efforts of advancing gender equality.³²⁴

The introduction of Free Primary Education (FPE) in 2003 made significant progress in closing the gender gap in enrolment. However, substantial disparities remained which prompted the

³²³Vera Shawiza, 'Gender Parity in Girl Child Education in Kenya Narrows' (*Kenya markets and investment opportunities*, 2016) <<http://sokodirectory.com/2016/11/gender-parity-girl-child-education-kenya-narrows/>> accessed 14 May 2017.

³²⁴ *ibid.*

government to develop other policy and legislative measures to close the gap. There was need to analyse the unique challenges that the girl child was facing and establish mechanisms that would remedy particular issues. In 2007, the Ministry of Education developed a Gender Policy in Education that was aimed at mainstreaming gender equality in the education sector. In particular, the Gender Policy reinforced the re-admission of girls, a policy that had been developed in 1994. The Re-admission Policy was aimed at increasing the participation of women and disadvantaged girls in education. Under this policy, any girl who became pregnant while in school would be readmitted to school to further their studies.³²⁵

In recognition of the unique challenges that girls in Arid and Semi-Arid Lands (ASALs) face, the government has introduced mobile schools, low-costing boarding schools, and adopted affirmative action measures to promote higher enrolment into universities and other institutions of higher learning.³²⁶ The Joint Admission Board (JAB), now known as Kenya Universities and Colleges Central Placement Service (KUCCPS) applies an affirmative action that allows girls with two points less than the cut-off marks to be admitted to public universities. In addition to this, JAB has adopted a special measure to promote access to higher education among students from ASALs.³²⁷ Under this special measure, students with one to five points lower than national cut-off point mark are enrolled in public universities of their choice. This measure has increased the total enrolment of girls in higher education, both in ASALs and other regions.³²⁸

The government has also offered enhanced bursaries for girls to enhance their access and participation at the secondary school level. Since the financial year 1993/1994, the government through the Ministry of Education has been running the Secondary Education Bursary Fund (SEBF) that is allocated to the 210 constituencies based on their poverty index.³²⁹ This fund targets vulnerable groups such as girls, orphans and students from poor backgrounds. With Regards to WASH facilities in schools, the government introduced the Kenya Education Sector

³²⁵Omwancha, K., 'The Implementation Of An Educational Re-Entry Policy For Girls After Teenage Pregnancy: A Case Study Of Public Secondary Schools in The Kuria District, Kenya' (PhD, Victoria University of Wellington 2012).

³²⁶Obonyo, M., 'The Contributions of Affirmative Strategies to Widening Access to Universities for Students from Kenya's ASAL Regions' (PhD, Kenyatta University 2013).

³²⁷ *ibid.*

³²⁸ *ibid.*

³²⁹Obiero, P., 'Effectiveness of Constituency Development Fund Bursary Scheme on Participation Rate In Public Secondary Schools In Rachuonyo North District' (Master's Thesis, University of Nairobi 2017).

Support Programme (KESSP) through which the government cost-shared with donors the responsibility of providing WASH services and other forms of infrastructure.³³⁰

d) Lessons for South Sudan on Discrimination

Research has shown that educating women is beneficial at the national, community, family and individual level. Therefore, South Sudan should embark on developing policy and legislative measures that will promote women education to harness their potential. Like Kenya, South Sudan should take steps to eradicate poverty as a barrier to girl education. MoEST can create bursary funds or offer scholarships for students. Moreover, MoEST can develop affirmative action programmes that will increase the total enrolment of girls and young women into primary, secondary, and institutions of higher learning. Lastly, the government should seek partnerships and donor funds from NGOs and other international bodies to provide the required facilities and school infrastructure that it cannot provide due to limited resources.

4.4 Conclusion

The enactment of the General Education Act in 2012 marked the first step towards streamlining the education system in South Sudan. As illustrated in the comparative analysis, much effort is needed to ensure that students in South Sudan enjoy their right to education in an accessible and equitable manner. Based on this analysis, the government of South Sudan can streamline its education system by borrowing and improving some of the best practices implemented in Kenya and South Africa. In the next chapter, this study will draw conclusions from the research and make recommendations that may be carried out in South Sudan.

³³⁰ Wash in Schools, 'Enabling Policy Environment for Wash in Schools' (*Wash in Schools (Kenya)*, 2017) <<http://washinschoolsmapping.com/projects/kenya.html>> accessed 14 May 2017.

CHAPTER FIVE: CONCLUSION AND RECOMMENDATIONS

This chapter concludes and proposes recommendations of matters covered by the study.

5.1 Conclusion

This study sought to analyse the extent to which the right to education has been recognized and implemented in the Republic of South Sudan. The background of the research appreciated the fact that education plays a significant role in a society at various levels, socially, economically and even politically. It went on to mention that the right to education has been guaranteed in various international legal instruments and even regional instruments. However, a closer look at the situation in South Sudan reveals a saddening story. There are many challenges facing the education sector, and which beg the question of whether the law has been used adequately to address the existing challenges.

The study was limited to a study of the right to education within the Republic of South Sudan. It was based on the backdrop that the Republic of South Sudan is a young nation that faces numerous challenges in the education sector. The current situation leaves a lot to be desired in the face of international and regional laws that recognize the right to education for the citizens of South Sudan.

The research found its basis in the positivism legal theory as well as the education theory. The rationale for this basis was that the research sought to establish various methods of legal intervention by the government in the recognition of the right to education as elucidated in international and regional legal instruments. The education theory further makes a case for the establishment of policies and seeks to know, understand and prescribe educational policy and practice.

South Sudan has experienced civil war for a long time. This has compromised many sectors in the nation with the education sector facing a harsh blow. There has been a low funding on the education sector and the enrolment has significantly reduced. This has further affected other pillars of the education sector, leaving the sector on its knees in a manner that begs urgent interventions. It is in this light that this research came in to assess the recognition of the right to education at various levels including the international and regional levels, seeking to establish the claim that the law must come in to provide remedies, since it is an important tool for social change.

Specifically, the research further proceeded with the following hypotheses: First, the right to education is emphasized and prioritized in legal instruments at international, regional and national levels. Second, there are several hindrances of the right to education which the law can be used to address and third that South Sudan can borrow best practices on the promotion of the right to education from Kenya and South Africa. Chapter two, three and four went on to prove the hypothesis while answering the identified research question.

The research proceeded in chapter two by analysing the legal framework on the right to education. Particularly, the researcher went on to look at the international, regional and national levels of the legal framework. The hypotheses of the research are as outlined and this conclusion will seek to assess the same in light of the findings of this study.

5.1.1 Recognition of the right to education

The research made the hypothesis that the right to education has been widely recognized at the international and regional level but the situation at the national level remains a far cry from the expected reality.

Chapter two of the research elaborated the hypothesis and set out the various international, regional and national instruments that have established education as a right. There are several international treaties that can be cited as sources of law recognizing the right to education. Primarily, the Universal Declaration of Human Rights is emphatic that the right to education is a human right. This recognition sets the ground for the manner in which state parties consider and invest in the education sector.

It is important to note that South Sudan is a member party of the Universal Declaration of Human Rights and therefore expected to fulfil state obligations. The declaration calls on parties to ensure that fundamental human rights, including the right to education are universally protected. This is what this research sought to find out in the discussion that was articulated in chapter two of this study.

The kind of education envisaged in the various international instruments is one that is free and accessible at the elementary and fundamental levels. The International Covenant on Economic Social and Cultural Rights also seeks to reinforce the importance of the right to education. The International Covenant on Economic, Social and Cultural Rights (ICESCR), has also been quoted in its reiteration under Article 13(1) the provisions in Article 26(2) of the UDHR on the right to education. Particularly, Article 13(2) (e) has been quoted in its proposition that,

“the development of a system of schools at all levels shall be actively pursued, an adequate fellowship system shall be established, and the material conditions of teaching staff shall be continuously improved.”

Other international legal instruments that have recognized the right to education are the International Labour Organisation, International Covenant on Civil and Political Rights and its two optional protocols. These legal instruments have all reiterated that the right to education is to be recognized and emphasized in various respects, including the matter of internally displaced persons and women. The Convention on the Elimination of All Forms of Discrimination against Women addresses the issue of discrimination on basis of gender in the education sector. This resonates with the situation in South Sudan, which is a country that has witnessed increasing levels of discrimination against women. As the civil war has continued to rage on, the right of women to education has constantly been trampled underfoot.

There are other instruments that address special needs of special groups such as children and persons with disabilities. The Convention on the Rights of Persons with Disabilities and the United Nations Convention on the Rights of the Child (CRC) adopted in 1989 have been analysed in the chapter to bring out the emphasis given on the right to education.

Given the unique needs of the Republic of South Sudan, the Optional Protocol on the Involvement of Children in Armed Conflict is relevant. There has been a challenge of civil war causing involvement of children in armed conflict. This further causes children to lose an opportunity to attend school, a factor that has contributed to the low school enrolment in the country.

The research has gone further to consider the regional legal framework on the right to education. Apart from the African Charter on Human and Peoples' Rights, 1981, the research has highlighted the African Charter on the Rights and Welfare of the Child 1990 and the manner in which it lays down a comprehensive framework for the right to education.

Regionally, the protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa further addresses the needs of women. It guarantees comprehensive rights to women including the right to take part in the political process, to social and political equality with men, improved autonomy in their health decisions, and an end to female genital mutilation. Accordingly, women should be granted equal opportunities including opportunities in the education sector.

Another important regional instrument is the African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa. This is relevant for the people of South Sudan considering the prevailing civil war that has caused many people to be displaced from their homes.

The African Youth Charter focuses on ways of empowering the youth, while emphasizing on education and skills development for the youth in African countries. This includes the use of multiple forms including formal, non-formal, informal, distance learning and life-long learning; to meet the diverse needs of young people.³³¹

At the national level, chapter three has concluded by contrasting the national legal framework in light of the standard that has been set at the international level. The constitution of the Republic of South Sudan provides that Education is a right for every citizen and all levels of government are mandated to provide access to education without discrimination of any sort.³³² This is in conformity with the provisions of the international legal instruments that have emphasized on the access to education as a right. Article 17 (1) (d) of the Constitution goes further to protect children from exploitative practices that may be hazardous to his or her right to education.

The government is further mandated by the constitution to promote education at all levels while mobilizing resources to promote research. This in line with the standard set at the international level by various conventions discussed in the foregoing chapters.

Further, the child Act, 2008 focuses on the right of children to education and provides that there is a compulsory right to education. The Constitution also goes further to protect the right of other special classes of persons, including persons with disability and the elderly.

The hypothesis that the right to education has been legally provided in various levels therefore holds true though to a limited extent. The national legal framework has provided for the right to education but it needs to be more comprehensive in order to capture the unique needs of the Republic of South Sudan.

³³¹ African Youth Charter, 2006, Article 13.

³³² There should be no discrimination on any basis, including but not limited to religion, race, ethnicity, health status including HIV/AIDS, gender or disability.

5.1.2 Hindrances of the right to education addressed by the law

Chapter three went on to address the challenges facing access to education in the Republic of South Sudan. This section gives a conclusion of the challenges while seeking to address the hypothesis made in the research on whether the law can be couched to provide a remedy to the challenges and in recognition of the right to education.

The problem of access to education cannot be considered in isolation. There are numerous other challenges that weigh in on the right of the citizens of South Sudan to access education. Chapter three has discussed at length some of these problems, noting their intersection with legal issues affecting the right to education.

The challenge of poor enrolment and transition rate in lower levels of the education system is telling of a society that faces many other challenges of a monumental proportion. These challenges are intertwined and a solution must be drafted taking into consideration the interplay of the various solutions that can be addressed by the court.

The research has prominently cited the challenge of poor enrolment and transition from one level to another. Schools have poor enrolment rates because of increased poverty levels. Majority of the population lives in abject poverty, notwithstanding that the country is endowed with natural resources like oil. Various researchers have established that many students opt to stay at home because of the harsh economic conditions. The hope of the country of South Sudan lies diminished and hushed by the shouting injustice. The problem of poor leadership cannot be overlooked. Policies and implementation of laws at high places in the government is basically determined by the quality of leadership in the country. Consequently, there are harsh economic conditions that can only dampen any efforts at reviving the education sector.

When the society is faced with such challenges it must adopt laws and policies that are aimed finding a multifaceted solution. This is a solution that must seek to address not only the superficial challenge of access, but also the underlying associated issues.

The study has further established that poverty has had a great toll on the funding of the education sector, whereby a significantly low budget is set aside for advancement of the education sector. The result of poor funding is poor infrastructure and limited capacity building of the education institutions. It is interesting to note that even the basic investment in the education sector remains lacking in South Sudan.

Civil war in the Republic of South Sudan stands out as a source of many challenges that have bedevilled the education sector for a long time. The country slipped into civil war and has had an unstable situation for a long time. During this period, the war has had multiple problems, the ripple effect spreading far and wide. Education can hardly thrive in such conditions. Many school-going children end up losing out on school enrolment and others simply cannot access education services.

The priorities of the nation have been adversely affected, with stability of the nation taking the centre stage. The objectives of the country have not focused properly on sectors like education and interconnected areas. While the efforts to end civil war are commendable, they do not mean that education should be neglected yet the constitution has recognized it is a right. This calls for a solution that is comprehensive.

5.1.3 Best practices from Kenya and South Africa

Chapter four of the study has analysed the recognition and protection of the right to education in Kenya and South Sudan. From the analysis, it is clear that South Sudan can draw parallels with the Kenyan system on various aspects. In fact, it has been reported that the Republic of South Sudan has in some instances used the Kenyan curriculum in some of its schools. Chapter four undertook a study of the education systems in Kenya and South Africa, while seeking to establish best practices that can be borrowed for implementation in South Sudan.

The research has brought out accountability issues as practiced and enforced in South Africa. The General Education Act in 2012 has provided for various measures that provide for proper use of resources in the education sector. This is a standard that can be borrowed for implementation in South Sudan, since the country suffers a similar fate. Corruption and misuse of resources were highlighted in this study as some of the key challenges facing the education sector in South Sudan.

Further, South Africa has also focused on leadership and integrity in the educational sector by setting out the criteria and principles of appointment of persons to various leadership positions in the educational sector. The legal framework in South Sudan has not adequately addressed this gap and the approach adopted by South Africa can stand to shed light on the challenges that the people of South Sudan grapple with often.

Both South Africa and Kenya have put in place measures to ensure increased access to education. South Africa appreciates the reality of poor families and disparities in income

distribution. It has put in place fees exemption policies in the legal framework and this is a measure that has caused an increase in school enrolment.³³³

On the security front, the government of South Africa has demonstrated how insecurity can be prevented from interfering with access to education. However, the research appreciates that the level of insecurity in South Sudan is a unique challenge far beyond what other countries are facing. The nation plunged into civil war and has been in this pit for a long time. This has ended up affecting the right of many school going children to access educational facilities. Besides, the war has had ripple effects which cumulatively have left many sectors of the country struggling to survive in the face of a difficult environment. While looking for ways of resolving the ensuing conflict, other measures should be formulated to ensure that the effect on education is minimized.

Kenya has also made several strides in efforts to ensure a functioning educational sector. The basic education Act provides for education for all children. There is free and compulsory primary education and improved education infrastructure. The constitution of Kenya 2010 has further guaranteed the right to education and other related rights which create an enabling environment for education to thrive in a nation. The government is mandated to ensure that these rights are guaranteed for all its citizens.

The research set out the hypothesis that the republic of South Sudan can borrow several lessons for implementation in its legal framework. The analysis made on the legal framework for both South Africa and Kenya reveals that the republic of South Sudan can implement several measures that have worked in Kenya and South Africa. However, it becomes difficult to compare the economy of South Africa and that of South Sudan and therefore we can only talk of getting the best practices.

5.2 Recommendations

Following the conclusion on the various findings made in the study, there are several recommendations that the research seeks to make in light of the right to education in the Republic of South Sudan.

³³³ETU.org.za, 'Education Policy: School Fees' (Etu.org.za, 2009) <<http://www.etu.org.za/toolbox/docs/government/schoolfees.html>> accessed 14 May 2017.

5.2.1 Implementation of the right to education

The legal framework should put in place measures that seek to ensure a smooth implementation of the right to education. This research recommends that the law should be framed in such a manner that it has mechanisms to monitor effective implementation of the measures proposed. Corruption, insecurity, infrastructural challenges, and discrimination against the girl child are challenges that can be addressed by law.

5.2.2 Customized Legal Reforms

The challenges facing the education sector in South Sudan are unique and demand unique solutions. The response of the law in promoting the right to education should consider the fact that the Republic of South Sudan has been in civil war for a long period of time which has caused many other challenges. This means that even the laws drafted for other sectors that have a direct impact on the education sector should be drafted with an aim of promoting the right to education. These laws include financial laws, laws on accountability and generally any other law that has a direct or indirect impact on the education sector. To address corruption, the South Sudan Anti-Corruption Commission Act of 2009 should be amended to include corruption in the education sector as one of the most serious crimes under the Act. The Commission should also be given powers to investigate and charge officials in the education sector with crimes. Other challenges like infrastructural challenges, discrimination, insecurity, and poverty can also be addressed using an Act of Parliament that outlines the challenges to access to education and how to fight them. This will go a long way in resolving the challenge of corruption and poor leadership, insecurity and will improve the educational infrastructure. As gleaned from the previous chapter, this import works well in South Africa and has helped in positively transforming the education sector within that country.

5.2.3 Affirmative action in the education sector

Women and the youth have suffered the most from the challenges facing the Republic of South Sudan. The long periods of civil war have seen many women and children victimized and violated. This injustice has often subjected them to lost opportunities, making it harder for women and children to get equal with men in the society. Consequently, the law on education should clearly seek to redress this as a matter of priority by coming up with specific solutions.

The government should seek to establish mechanisms for affirmative action especially for the youth and women. There has been a continued neglect of these groups of the society and something must be done to avert a lasting crisis.

As earlier noted, both South Africa and Kenya have embraced affirmative action in respect to women, children and other disadvantaged groups. In embracing affirmative action, South Sudan will be better placed to tackle the challenge of poverty and discrimination against the girl child.

5.2.4 Comprehensive legal interventions

This research seeks to establish the need for a comprehensive legal solution, seeing that many factors affect the right to education. The research has brought out the key challenges impounding the right to education and this brings out the need for a broad-based legal framework. The focus is not just on the law touching directly on the right to education but also on other laws whose impact cannot be underestimated in promoting the right to education.

Some of the areas that should be considered in seeking the requisite remedies include the areas on security and allocation of resources. There should be a proper analysis of the status of education in South Sudan with an aim of instituting legal reforms.

Laws touching on insecurity, educational infrastructure, and the uniformity of curriculum across the educational sphere can be borrowed from Kenya and South Africa as outlined in the chapter four. These two countries have adequately dealt with these problems. Moreover, the achievement of political stability within South Sudan will work towards alleviating some of the perennial insecurity challenges.

5.2.5 Penal sanctions for violations

The formulation of laws needs to be accompanied by relevant penal sanctions to ensure that provisions on access to education are implemented. Those who violate the law that protects the right to education should face commensurate sanctions aimed at protecting the right to education. Particularly, any misuse of resources allocated for the education sector should be punished accordingly. It should be noted that in South Sudan there is an acute shortage of resources for use in the education sector.

The research has highlighted the effect of rampant corruption that has almost crippled the education sector due to an increased misuse of resources meant to advance the education sector. The use of penal sanctions, as noted in chapter four, and as applied in South Africa, will help in improving compliance with the law. This compliance will result into the improvement of the state of education.

BIBLIOGRAPHY

Books

1. Ababneh, A., *Education and Development* (2014).
2. Africa Human Development Series, *Education in Republic of South Sudan: Status and Challenges for New System* (World Bank, 2012).
3. Ali, N., *Gender and State building in South Sudan*. The United States Institute of Peace 2011.
4. Algoyen, F. *Corruption in the public education system manifestations and goings out*. 2014.
5. Austin, J. *Lectures on Jurisprudence*. The Philosophy of Positive Law by Murray, 1875.
6. Babyesiza, A. *University Governance in (Post-) Conflict Southern Sudan 2005–2011: The Nexus of Islamism, New Public Management and Neopatrimonialism Organization and Public Management* (Illustrated Publisher Springer, 2014).
7. Bardhan, P. *The Economist's Approach to the Problem of Corruption*. World Development, 2006.
8. Barnaba, E., *Examining the Contemporary Status of an Education System: The Case Of The Republic Of South Sudan*. ERIC - Education Resources Information Centre by the Institute of Education Sciences (IES), 2015.
9. Brown, G., *UN Special Envoy for Global Education 'Accelerating Progress to 2015: South Sudan*.
10. Brown, G., *Education in South Sudan: Investing In A Better Future*. United Nations Educational, Scientific and Cultural Organization, 2011.

11. Brown, G., *Education In South Sudan: Investing In A Better Future*. The Office of Gordon and Sarah Brown, 2012.
12. Brown, G., *UN Special Envoy for Global Education. Accelerating Progress to 2015: South Sudan*.
13. Brown, G., *UN Special Envoy for Global Education. Accelerating Progress to 2015: South Sudan*.
14. Parekh, C. B., *Bentham, J: Critical Assessments* Taylor and Francis, 1993.
15. Dagne, T., Daine, *The Republic of South Sudan: Opportunities and Challenges for Africa Newest Country* (2012).
16. Davies, L., *Education and Conflict: Complexity and Chaos*. Routledge, 2003.
17. Bunn, I., *Right to Development: Implications for International Economic Law*. (1999) Am. U. Int'l L. Rev.
18. Education Cluster South Sudan, *South Sudan Minimum Standards for Education In Emergencies* South Sudan Education Cluster c/o UNICEF South Sudan, 2012.
19. Hewison, M., *The Status Of Teacher Professional Development In Southern Sudan*. United States Agency for International Development, USAID 2009).
20. Jack, E and Amani, *Education Is My Mother and Father: The 'Invisible' Women of Sudan* Refuge Canada's Journal on Refugees, 2012.
21. Jejeebhoy, S *Women's Education, Autonomy, and Reproductive Behaviour: Experience from Developing Countries* OUP, 1995.
22. Kavesu, B., *Children Discriminated Against In Southern Sudan* Save the Children Sweden, 2007.

23. Kim, H., et al. *Seeing The Reconstruction Of Primary Education In Southern Sudan Through EMIS 2006-2009*. Education Policy and Data Centre and Systems Services Centre, AED, UNESCO 2011.
24. Kristine, A Breidlid, *A Concise History of South Sudan*, African Books Collective, 2010.
25. Hillman, L and Jenkner, E *Educating Children in Poor Countries*, 1st edn, International Monetary Fund, 2004.
26. Lindahl, R. *The Right to Education in a Globalized World*, Journal of Studies in International Education, 2006.
27. Lorber, J. *Gender Inequality* (2010).
28. Madut, J., *Mapping the Sources of Conflict and Insecurity in South Sudan: Living in fear under a Newly-Won Freedom*.
29. Madut, J., *Mapping the Sources of Conflict and Insecurity in South Sudan*.
30. Omwami M., *Relative-change Theory: Examining the Impact of Patriarchy, Paternalism, and Poverty on the Education of Women in Kenya*, Gender and Education, 2011.
31. Njeri, M., *The Girl has no Rights': Gender-Based Violence in South Sudan*, CARE International, 2014.
32. Sengupta, A., *Realizing the Right to Development*. Development and Change , 2000.
33. Sengupta, A., *On the Theory and Practice of the Right to Development*, Human Rights Quarterly, 2002.

34. Snieska, V and Simkunaite, I. *Socio-Economic Impact of Infrastructure Investments*, Engineering Economics, 2009
35. Tavassoli, M and Naini, *Education Right of Children during War and Armed Conflicts*, Procedia-Social and Behavioral Sciences, 2011.
36. Teresa, M Castro, *Women's Education and Fertility: Results from 26 Demographic and Health Surveys Studies in Family Planning*, 1995.
37. The World Bank, *Education in the Republic of South Sudan Status and Challenges for A New System*, International Bank for Reconstruction and Development, 2012.
38. Dickens, T *The Role of Education in Reducing Poverty in South Sudan* (2011).
39. Udombana, N., *The Third World and the Right to Development: Agenda for the Next Millennium*, Human Rights Quarterly, 2011.
40. UNICEF, *The Crisis In South Sudan: Investing In Education Strengthens Psychosocial Recovery; Promotes Integration And Peaceful Coexistence; And Builds A Nation*. United Nations Children's Fund, UNICEF 2015.
41. United Nations Human Rights Commission Frequently Asked Questions on the Right to Development Fact Sheet No. 37.
42. Sawhill, V Tebbs,J and T,W. Dickens, *The Effects of Investing in Early Education on Economic Growth* (2006).
43. Wade, L., *Implementation of Integrated, Coherent and Coordinated Support to South Sudan by the United Nations System*, United Nations Economic and Social Council, ECOSOC 2014.
44. Winthrop, R and Kirk, J., *Teacher Development And Student Well-Being; IRC's Healing Classrooms Initiative Forced Migration Review*, 2005.

45. World Bank, *The Status of the Education Sector in Sudan*.
46. Ylva, B., *The Universal Right to Education: Freedom, Equality and Fraternity Studies in Philosophy and Education*, 2010.

Journal Articles

47. Alexander, K et al, 'The Life-Cycle Costs of School Water, Sanitation and Hygiene Access in Kenyan Primary Schools' (2016) 13 *International Journal of Environmental Research and Public Health*.
48. Arrowsmith, S *The Law of Public and Utilities Procurement*, Sweet & Maxwell, Limited, 2016.
49. Gichuhi, L 'Provision Of Education In A Post-Conflict Country A Case Of South-Sudan' (2015) 2 *International Journal of Scientific Research and Innovative Technology*.
50. Krappmann, L 'The Rights of the Child as a Challenge to Human Rights Education' (2006) *JSSE-Journal of Social Science Education* 1, 5.
51. Mampane, M, 'Procedures And Processes Followed In The Appointment Of Principals For School Leadership And Management' (2015) 42 *Journal of Social Sciences*.
52. Marks, M 'Human Right to Development: Between Rhetoric and Reality, The' (2004) 17 *Harvard Human Rights Journal* 137, 151.
53. Seira, Y (2014). "Breaking Imaginary Barriers: Obligations of Armed Non-State Actors under General Human Rights Law – The Case of the Optional Protocol to the Convention on the Rights of the Child". *Journal of International Humanitarian Legal Studies*. 5 (1-2): 213–257. Retrieved 30 January 2015.

54. Shao-Wen Su, 'The Various Concepts Of Curriculum And The Factors Involved In Curricula-Making' (2012) 3 *Journal of Language Teaching and Research*.
55. Xaba, M and Dumisane Ngubane, 'Financial Accountability At Schools: Challenges And Implications' (2010) 50 *Journal of Education*.

Conference Papers

56. Centre for Applied Legal Studies, University of the Witwatersrand School of Law, 'Sexual Violence by Educators in South African Schools: Gaps in Accountability.' Cornell Law School 2017.
57. Centre for Devolution studies (CDS), 'Participation in Kenya's Local Development Funds: Reviewing the Past to Inform the Future.' Kenya School of Government, 2015.
58. Glennerster, R., et al, 'Access and Quality in the Kenyan Education System: A Review of the Progress, Challenges and Potential Solutions'. Office of the Prime Minister of Kenya, 2011.
59. Ministry of Education, Science and Technology (Kenya), 'Basic Education Programme Rationale and Approach 2013 – 2018.' Ministry of Education, Science and Technology 2014.
60. Njoka, E. et al, 'Towards Inclusive and Equitable Basic Education System: Kenya's Experience'. Association for the Development of Education in Africa (ADEA) 2012.
61. South Sudan | Global Partnership for Education'.
62. SWASH, 'Kenya's KESSP School Infrastructure Improvement Program: An Assessment of Roles And Responsibilities'. Sustaining and Scaling School Water, Sanitation, and Hygiene, Plus Community Impacts (SWASH+) program, by CARE International in Kenya, 2011.

Working Papers.

63. Blackmore, J and others, 'Research Into The Connection Between Built Learning Spaces And Student Outcomes' (2011) 22 *Department of Education and Early Childhood Development, East, Melbourne, Victoria, Au.*
64. Byrne, M Were, 'The Influence of Low-Cost Boarding Primary Schools on Access and Retention in Arid and Semi-Arid Lands: A Case of Lomelo Division; Turkana County Kenya.' Master's Thesis, Kenyatta University, 2014.
65. Development Initiatives, 'A Summary of Kenya's Budget 2017/18 From a Pro-Poor Perspective: Factsheet.' Development Initiatives Poverty Research Limited, 2017.
66. Keku, E., 'Curriculum leadership and management in selected schools in Limpopo Province.' PhD, University of Pretoria 2011.
67. Mbatsane, P. 'The Financial Accountability of School Governing Bodies.' Master's Degree, University of Pretoria, 2006.
68. Obiero, P., 'Effectiveness of Constituency Development Fund Bursary Scheme on Participation Rate in Public Secondary Schools in Rachuonyo North District'. Master's Thesis, University of Nairobi 2017.
69. Obonyo, M., 'The Contributions of Affirmative Strategies to Widening Access to Universities for Students from Kenya's ASAL Regions.' PhD, Kenyatta University 2013.
70. Omwancha, K., 'The Implementation Of An Educational Re-Entry Policy For Girls After Teenage Pregnancy: A Case Study Of Public Secondary Schools in The Kuria District, Kenya.' PhD, Victoria University of Wellington 2012.
71. Onyango, P. 'Effectiveness of Kenya Education Sector Support Programme Grants In Improving Infrastructure In Public Primary Schools In Nyamache District, Kenya.' Master's Thesis, University of Nairobi 2012.

72. Prof. Dr. Radović ,M-Marković, Fellow, World Academy of Art & Science, 'Corruption in Education: A major issue.' See also Hallak J & Poisson, 'Ethics and corruption in education (Policy Forum No. 15).' Results from the Expert Workshop held at the IIEP, Paris, France, 28-29 November, 2001. Paris: IIEP-UNESCO.
73. Relation to Bribery Charges against Macmillan Publishers Limited in an Education Project in Sudan',press release no. 2012/038/INT, 22 July 2012.
74. Rono,P Chesengeny, 'The Determinants of Accessibility to Water in Secondary Schools In Kajiado County, Kenya.' Masters Theses, University of Nairobi, 2013.
75. Sanjeev, G. Hamid D and Tiongson E, 'Corruption and the Provision of Health Care and Education Services' , Working Paper no. 00/116. Washington, C: IMF, 2000.
76. The Guardian (UK), 'Macmillan Ordered to Pay \$17m for Corruption in South Sudan',25 July 2011. See also, World Bank, 'World Bank Applauds Action by the UK Serious Fraud Office.
77. White,M 'Poverty and Education: A teacher's perspective'. Summary of the findings of the focus group research.
78. Yussuf, A Abdi, 'Education, Conflict and Development: The Case of Northern Kenya' (Master's Thesis, Institute of Education, University of London 2012).

Reports

79. Brophy, M 'Progress To Universal Primary Education In Southern Sudan: A Short Country Case Study For The EFA Monitoring Report.' United Nations Educational, Scientific and Cultural Organization, UNESCO 2003.
80. Education For All (EFA) Review Report 2015.

81. Jerop S Ruto, Nyamauncho, Z Ongwenyi and Kabutha, J Mugo, 'Educational Marginalisation in Northern Kenya,' Education for All Global Monitoring Report 2010, UNESCO 2010.
82. Ministry of Education, Science and Technology, Government of the Republic of South Sudan, Ministry of Education, Science and Technology, 'Education For All Review Report 2015'.
83. Ministry of Education, Science and Technology, 'Education For All (EFA) Review Report 2015.' Ministry of Education, Science and Technology, MoEST, South Sudan 2015.
84. Ministry of Education, Science and Technology, '2017/18 – 2019/20 Education Sector Report' MoEST 2016.
85. Ministry of Education, Science and Technology, Government of the Republic of South Sudan
86. Report, UN, mission in South Sudan (2014).
87. Report of the South Sudan Education.' Cluster Impact Evaluation, 2013.
88. Sudan, 'Education For All (EFA) Review Report 2015.
89. Transparency International, 'Global Corruption Report: Education.'
90. UNICEF, 'A Report of the Study on Socio-Economic and Cultural Barriers to Schooling in Southern Sudan.' Ministry of Education, Science, and Technology, 2008.
91. 'UNICEF South Sudan Annual Report 2015.' United Nations Children's Fund (UNICEF) 2015.

Newspapers and Other Electronic Sources

92. Biong, L Deng, 'Education in Southern Sudan: War, Status and Challenges of Achieving Education For All Goals' [2003] Background paper for UNESCO EFA Global Monitoring Report <http://w.sudanforall.org/sections/ihitiram/pages/ihitiram_issue4/luka_biong_deng.pdf> accessed 16 June 2017.
93. Brief History of South Sudan.' Water For South Sudan, <<http://www.waterforsouthsudan.org/brief-history-of-south-sudan/>> accessed 13 June 2017.
94. 'History of Education in South' (2011).
95. Beyani, C 'Implementation of the African Union Convention for the Protection and Assistance of Internally Displaced Persons (IDPs) 2009 (The Kampala Convention) | Brookings Institution' <<https://www.brookings.edu/on-the-record/implementation-of-the-african-union-convention-for-the-protection-and-assistance-of-internally-displaced-persons-idps-2009-the-kampala-convention/>> accessed 12 June 2017.
96. Educate A Child, 'Infrastructure.' Educateachild.org, 2017 <<http://educateachild.org/explore/barriers-to-education/infrastructure>> accessed 10 April 2017.
97. ETU.org.za, 'Education Policy: School Fees.' Etu.org.za, 2009 <<http://www.etu.org.za/toolbox/docs/government/schoolfees.html>> accessed 14 May 2017
98. Girls' Education South Sudan, 'South Sudan Education Statistics' *Girls' Education South Sudan*, 2012) <<http://girlseducationsouthsudan.org/south-sudan-education-statistics/>> accessed 9 April 2017.
99. Green, E 'Challenges facing Education in South Sudan.' Available at <<https://banaa.org/2013/06/18/the-challenges-facing-education-in-south-sudan/>> accessed on 11th April 2017.

100. Hall, K and Sonja Giese, 'Addressing Quality through School Fees and School Funding'.
101. ETU.org.za, 'Education Policy: School Fees.' Etu.org.za, 2009 <<http://www.etu.org.za/toolbox/docs/government/schoolfees.html>> accessed 14 May 2017.
102. Human Rights Watch, 'Lessons in Terror: Attacks on Education in Afghanistan: IV. The Indirect Impact of Insecurity on Education.' Available at <https://www.hrw.org/reports/2006/afghanistan0706/5.htm> > accessed on 12th April 2017.
103. IIEP UNESCO, 'Online Course tackles corruption in education.' <http://www.iiep.unesco.org/en/online-course-tackles-corruption-education-3379> <[accessed](http://www.iiep.unesco.org/en/online-course-tackles-corruption-education-3379) on 8th March 2017.
104. Kajilwa, G 'How New Curriculum Will Change Old Ways of Class Teaching and Learning.' *The Standard*, 2017. <<https://www.standardmedia.co.ke/article/2001227870/how-new-curriculum-will-change-old-ways-of-class-teaching-and-learning>> accessed 14 May 2017.
105. Leonardi, T 'Which Country Comes Top for Skills and Education?' *World Economic Forum*, 2015. <<https://www.weforum.org/agenda/2015/05/which-country-comes-top-for-skills-and-education/>> accessed 14 May 2017.
106. Madut, J Jok, 'Mapping the Sources of Conflict and Insecurity in South Sudan. UNDP, 'About South Sudan' available at <http://www.ss.undp.org/content/south_sudan/en/home/countryinfo.html> accessed on 11th April 2017.
107. Maphalala, T 'South Sudan Celebrates Its First Comprehensive Curriculum.' *Global Partnership for Education*, 2015

- <<http://www.globalpartnership.org/blog/south-sudan-celebrates-its-first-comprehensive-curriculum>> accessed 9 April 2017.
108. Mbaka, J 'Education, Infrastructure Take Huge Chunk of Sh2 Trillion Budget' *The Star, Kenya*: May 2016. <http://www.the-star.co.ke/news/2016/04/30/education-infrastructure-take-huge-chunk-of-sh2-trillion-budget_c1342089> accessed 13 May 2017.
109. Ministry of Education, Science and Technology, 'Education Statistics for the Republic of South Sudan.' Ministry of Education, Science & Technology (MoEST) 2015. <<http://www.southsudanemis.org>> accessed 10 April 2017.
110. N Gina, 'School Safety / Violence & Bullying in Schools; Quality Learning And Teaching Campaign (QLTC) Implementation: Progress Report | PMG' (Pmg.org.za, 2015) <<https://pmg.org.za/committee-meeting/21219/>> accessed 14 May 2017.
111. Omar,A. Gurgur, T 'Does Corruption Affect Health and Education Outcomes in the Philippines?' Available at <http://papaers.ssrn.com/so13/papers> accessed on 8 March 2017.
112. Transparency International, 'Global Corruption Report: Education. Pretorius,W '63% Of Young SA Children Live in Poverty - Study' (News24, 2016) <<http://www.news24.com/SouthAfrica/News/63-of-young-sa-children-live-in-poverty-study-20160513>> accessed 14 May 2017.
113. Report Illiteracy Rate in South Sudan.' Alitihad, 2015 www.alitihad.org accessed 18 November 2016.
114. 'Report on the Impacts of Conflicts in South Sudan' (2013) <http://allafrica.com/view/group/main/main/id/00034550.html> accessed 15 December 2016.

115. Shawiza, V 'Gender Parity in Girl Child Education in Kenya Narrows' (*Kenya markets and investment opportunities*, 2016) <<http://sokodirectory.com/2016/11/gender-parity-girl-child-education-kenya-narrows/>> accessed 14 May 2017.
116. Sudan Tribune, 'Growing insecurity disrupts education in Rumbek.' Available at <<http://reliefweb.int/report/south-sudan/growing-insecurity-disrupts-education-rumbek>> accessed on 12th April 2017.
117. The Feminist Theory', (*Amazon Castle*, 2004) <http://www.amazoncastle.com/feminism/ecocult.shtml> accessed 28 December 2016.
118. Tutkuay, K 'Counting the costs: Secondary Education in Emergency in South Sudan.' Available at <<https://www.linkedin.com/pulse/counting-costs-secondary-education-emergency-south-sudan-tutkuay>> accessed on 11th April 2017.
119. UNDP, 'About South Sudan' available at <http://www.ss.undp.org/content/south_sudan/en/home/countryinfo.html> accessed on 11th April 2017.
120. UN General Assembly "Universal declaration of human rights." *UN General Assembly* (1948).
121. 'South Sudan | Global Partnership for Education' <<http://www.globalpartnership.org/country/south-sudan>> accessed 12 June 2017.
122. UNICEF, 'Statistics: South Africa' (*UNICEF|Children's Rights & Emergency Relief Organization*, 2013) <https://www.unicef.org/infobycountry/southafrica_statistics.html#117> accessed 14 May 2017.
123. USAID 'South Sudan Education' (*USAID*, 2011) <https://www.usaid.gov/south-sudan/education> accessed 18 December 2016.

124. USAID, 'Teacher Education and Professional Development (TEPD)' (*Usaid.gov*, 2013) <<https://www.usaid.gov/kenya/fact-sheets/teacher-education-and-professional-development-tepd>> accessed 14 May 2017.
125. Wanzala,O 'New Education System to Start in May' (*Daily Nation*, 2017) <<http://www.nation.co.ke/news/education/education/2643604-3782408-14o33xxz/>> accessed 14 May 2017.
126. Wash in Schools, 'Enabling Policy Environment for Wash in Schools' (*Wash in Schools (Kenya)*, 2017) <<http://washinschoolsmapping.com/projects/kenya.html>> accessed 14 May 2017.
127. World Bank, 'Public funds spent on education exceed 4.4 per cent of GDP (2010)'. This figure compares to 2.1 per cent of GDP spent on public health (World Bank, 'Health Expenditure, Public (% of GDP)'), 2009, available at <http://data.worldbank.org/indicator> accessed on 8 March 2017.
128. World Bank, 'South Sudan'. Available at <<http://www.worldbank.org/en/country/southsudan>> accessed on 11th April 2017.