

Towards Inclusive and Quality Education as a Tool for Empowerment in Kenya

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Abstract

The realization of sustainable development goals depends not only on the availability of natural resources but also on the availability of relevant human knowledge. It is out of this recognition that the United Nations 2030 Agenda on Sustainable Development acknowledges the place of education and gives the right of access to education prominence under Goal 4. Arguably, the right to education forms the basis for the realization of many other sustainable development goals especially those related to empowerment, poverty eradication, peacebuilding, justice, and development, among others. Despite this recognition, many countries, including Kenya, are still struggling with the achievement of this right. This paper discusses the economic, social, cultural, and political constraints that have held back Kenya from achieving the right to inclusive and quality education for all.

1. Introduction

Empowerment is defined as the process by which people's capabilities to demand and use their human rights grow. They are empowered to claim their rights rather than simply wait for policies, legislation, or the provision of services, where initiatives should be focused on building the capacities of individuals and communities to hold those responsible to account. The goal is to give people the power and capabilities to change their own lives, improve their communities, and influence their destinies.¹

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¹ UNICEF and UNESCO (eds), *A Human Rights-Based Approach to Education for All* (UNICEF 2007) < <https://unesdoc.unesco.org/ark:/48223/pf0000154861> > accessed 6 December 2020.

Education is considered to be a key driver to transform lives, build peace, eradicate poverty, and drive sustainable development.² Arguably, education promises to free all citizens from the shackles of ignorance, poverty, and disempowerment, and endow them with the capacity to be architects of their destiny, and catalysts of entrepreneurship, innovation, and global citizenship.³ It is thus viewed, and rightly so, as an empowerment tool. This is recognized under *General Comment No. 13 on the Right to Education*⁴ which states that ‘as an empowerment right, education is the primary vehicle by which economically and socially marginalized adults and children can lift themselves out of poverty and obtain the means to participate fully in their communities. Education has a vital role in empowering women, safeguarding children from exploitative and hazardous labour and sexual exploitation, promoting human rights and democracy, protecting the environment, and controlling population growth’.⁵

Despite this, the provision of education in Kenya is often hampered by several challenges and while the law guarantees the right for all learners and other groups of people, there still exists practical challenges in the country. The challenges are attributable to different factors which range from social, economic, cultural, and political among others.

This paper highlights these challenges and offers some viable recommendations aimed at assisting the Government to meet its international and national obligations on the implementation of the right to education as a tool for empowerment for the Kenyan people.

² ‘Why Africa Needs to Ensure Inclusive and Equitable Quality Education and Lifelong Learning for All | Blog | Global Partnership for Education’ <<https://www.globalpartnership.org/blog/why-africa-needs-ensure-inclusive-and-equitable-quality-education-and-lifelong-learning-all>> accessed 7 December 2020.

³ Ibid.

⁴ UN Committee on Economic, Social and Cultural Rights (CESCR), *General Comment No. 13: The Right to Education (Art. 13 of the Covenant)*, 8 December 1999, E/C.12/1999/10.

⁵ Ibid, para. 1.

2. Inclusive and Quality Education: Definition and Scope

According to the United Nations' Committee on Economic, Social and Cultural Rights (CESCR), the right to education "epitomizes the indivisibility and interdependence of all human rights".⁶ Education has been formally recognized as a human right since the adoption of the Universal Declaration of Human Rights in 1948.⁷

It has been argued that quality education should provide children and young people with the necessary skills and knowledge, attitudes, and behaviour to lead positive and productive lives, and it should include not only literacy and numeracy but also wider life skills that empower them to be leaders and change-makers.⁸

The *General Comment No. 13 on the Right to Education*⁹ states that education is both a human right in itself and an indispensable means of realizing other human rights.¹⁰ The publication by the UN Committee on Economic, Social, and Cultural Rights elaborates the right to receive an education and states that:

While the precise and appropriate application of the terms will depend upon the conditions prevailing in a particular State party, education in all its forms and at all levels shall exhibit the following interrelated and essential features:

- (a) *Availability*: Functioning educational institutions and programmes have to be available in sufficient quantity within the jurisdiction of the State party. What they require to

⁶ Ibid.

⁷ UNICEF and UNESCO (eds), *A Human Rights-Based Approach to Education for All* (UNICEF 2007), 7 < <https://unesdoc.unesco.org/ark:/48223/pf0000154861>> accessed 6 December 2020.

⁸ 'The Right to Inclusive, Quality Education' (*Plan International*) <<https://plan-international.org/education/right-inclusive-quality-education>> accessed 7 December 2020.

⁹ UN Committee on Economic, Social and Cultural Rights (CESCR), *General Comment No. 13: The Right to Education (Art. 13 of the Covenant)*, 8 December 1999, E/C.12/1999/10.

¹⁰ Ibid, para. 1.

function depends upon numerous factors, including the developmental context within which they operate; for example, all institutions and programmes are likely to require buildings or other protection from the elements, sanitation facilities for both sexes, safe drinking water, trained teachers receiving domestically competitive salaries, teaching materials, and so on; while some will also require facilities such as a library, computer facilities, and information technology;

(b) *Accessibility*: Educational institutions and programmes have to be accessible to everyone, without discrimination, within the jurisdiction of the State party. Accessibility has three overlapping dimensions: *Non-discrimination* - education must be accessible to all, especially the most vulnerable groups, in law and fact, without discrimination on any of the prohibited grounds (see paras. 31-37 on non-discrimination); *Physical accessibility* - education has to be within safe physical reach, either by attendance at some reasonably convenient geographic location (e.g. a neighbourhood school) or via modern technology (e.g. access to a “distance learning” programme); *Economic accessibility* - education has to be affordable to all. This dimension of accessibility is subject to the differential wording of article 13 (2) in relation to primary, secondary, and higher education: whereas primary education shall be available “free to all”, States parties are required to progressively introduce free secondary and higher education;

(c) *Acceptability* - the form and substance of education, including curricula and teaching methods, have to be acceptable (e.g. relevant, culturally appropriate and of good quality) to students and, in appropriate cases, parents; this is subject to the educational objectives required by article 13 (1) and such minimum educational standards as may be approved by the State (see art. 13 (3) and (4));

(d) *Adaptability* - education has to be flexible so it can adapt to the needs of changing societies and communities and

respond to the needs of students within their diverse social and cultural settings.

Thus, for any education to be considered quality, it should satisfy the above features.

Inclusive education has been defined as follows:

Inclusive education refers to securing and guaranteeing the right of all children to access, presence, participation, and success in their local regular school. Inclusive education calls upon neighbourhood schools to build their capacity to eliminate barriers to access, presence, participation, and achievement to be able to provide excellent educational experiences and outcomes for all children and young people.¹¹

Notably, inclusive education is secured by principles and actions of fairness, justice, and equity. It is considered to be a political aspiration and an educational methodology.¹²

3. International and Domestic Legal and Institutional Frameworks on Education

3.1. International and Relevant Regional Legal and Institutional Frameworks

There are various international human rights instruments, ranging from agreements, charters, protocols, treaties, recommendations, conventions, and declarations, which have established a solid international normative framework providing for the right to education for all.¹³

¹¹ Roger Slee, *Defining the Scope of Inclusive Education Think Piece Prepared for the 2020 Global Education Monitoring Report Inclusion and Education 2* (2019).

¹² *Ibid.*

¹³ UNESCO, 'The Right to Education - Law and Policy Review Guidelines' (UNESCO, 28 July 2014), 5 <<https://en.unesco.org/news/right-education-law-and-policy-review-guidelines>> accessed 6 December 2020.

The *United Nations Educational, Scientific and Cultural Organization* (UNESCO) is the only United Nations agency mandated to cover all aspects of education, and its main objective is to contribute to peace and security in the world by promoting collaboration among nations through education, science, culture, and communication. Its mandate is universal and works with governments around the world to promote education for all.¹⁴

a) Universal Declaration of Human Rights, 1948

The *Universal Declaration of Human Rights*¹⁵ guarantees that everyone has the right to education. It also guarantees that education shall be free, at least in the elementary and fundamental stages. Elementary education should also be compulsory. Besides, technical and professional education should be made generally available and higher education shall be equally accessible to all based on merit.¹⁶

It also provides that education shall be directed to the full development of the human personality and the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance, and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace.¹⁷

b) UNESCO Convention against Discrimination in Education, 1960

Notably, Kenya is yet to ratify the UNESCO Convention against Discrimination in Education (1960)¹⁸. The Convention defines 'discrimination' to include any distinction, exclusion, limitation or preference which, being based on race, colour, sex, language, religion, political or other opinions, national or social origin, economic condition or birth, has the purpose or effect of nullifying or impairing equality of treatment in education and in particular: of depriving any person or group of persons of access to

¹⁴ UNESCO, 'Education for the 21st Century', available at <http://en.unesco.org/themes/education-21st-century> accessed 6 December 2020.

¹⁵ UN General Assembly, *Universal Declaration of Human Rights*, 10 December 1948, 217 A (III).

¹⁶ *Ibid*, Article 26(1).

¹⁷ *Ibid*, Article 26(2).

¹⁸ UN Educational, Scientific and Cultural Organisation (UNESCO), *Convention against Discrimination in Education*, 14 December 1960.

education of any type or at any level; of limiting any person or group of persons to the education of an inferior standard; subject to the provisions of Article 2 of this Convention, of establishing or maintaining separate educational systems or institutions for persons or groups of persons; or of inflicting on any person or group of persons conditions which are incompatible with the dignity of man.¹⁹

For this Convention, the term 'education' refers to all types and levels of education and includes access to education, the standard and quality of education, and the conditions under which it is given.²⁰

In order to eliminate and prevent discrimination within the meaning of this Convention, the States Parties thereto are required: to abrogate any statutory provisions and any administrative instructions and to discontinue any administrative practices which involve discrimination in education; to ensure, by legislation where necessary, that there is no discrimination in the admission of pupils to educational institutions; not to allow any differences of treatment by the public authorities between nationals, except on the basis of merit or need, in the matter of school fees and the grant of scholarships or other forms of assistance to pupils and necessary permits and facilities for the pursuit of studies in foreign countries; not to allow, in any form of assistance granted by the public authorities to educational institutions, any restrictions or preference based solely on the ground that pupils belong to a particular group; and to give foreign nationals resident within their territory the same access to education as that given to their own nationals.²¹

The States Parties to this Convention are required to undertake furthermore to formulate, develop and apply a national policy which, by methods appropriate to the circumstances and to national usage, will tend to promote equality of opportunity and of treatment in the matter of education and in particular: to make primary education free and compulsory; make secondary education in its different forms generally available and accessible to all; make higher

¹⁹ UNESCO Convention against Discrimination in Education (1960), Article 1(1).

²⁰ *Ibid*, Article 1(2).

²¹ UNESCO Convention against Discrimination in Education (1960), Article 3.

education equally accessible to all on the basis of individual capacity; assure compliance by all with the obligation to attend school prescribed by law; to ensure that the standards of education are equivalent in all public educational institutions of the same level, and that the conditions relating to the quality of the education provided are also equivalent; to encourage and intensify by appropriate methods the education of persons who have not received any primary education or who have not completed the entire primary education course and the continuation of their education on the basis of individual capacity; and to provide training for the teaching profession without discrimination.²²

c) Convention on Technical and Vocational Education, 1989

Kenya is yet to ratify the UNESCO Convention on Technical and Vocational Education, 1989²³. The Convention defines 'technical and vocational education' to refer to all forms and levels of the educational process involving, in addition to general knowledge, the study of technologies and related sciences and the acquisition of practical skills, know-how, attitudes, and understanding relating to occupations in the various sectors of economic and social life.²⁴

The Convention requires the Contracting States to frame policies, to define strategies and to implement, following their needs and resources, programmes and curricula for technical and vocational education designed for young people and adults, within the framework of their respective education systems, to enable them to acquire the knowledge and know-how that are essential to economic and social development as well as to the personal and cultural fulfillment of the individual in society.²⁵

d) Recommendation on the Development of Adult Education, 1976

The Recommendation defines the term 'adult education' to denote the entire body of organized educational processes, whatever the content, level, and

²² Ibid, Article 4.

²³ UN Educational, Scientific and Cultural Organisation (UNESCO), *Convention on Technical and Vocational Education*, 10 November 1989.

²⁴ Ibid, Article 1(a).

²⁵ UNESCO Convention on Technical and Vocational Education, 1989, Article 2(1).

method, whether formal or otherwise, whether they prolong or replace initial education in schools, colleges, and universities as well as in apprenticeship, whereby persons regarded as an adult by the society to which they belong develop their abilities, enrich their knowledge, improve their technical or professional qualifications or turn them in a new direction and bring about changes in their attitudes or behavior in the twofold perspective of full personal development and participation in balanced and independent social, economic and cultural development; adult education, however, must not be considered as an entity in itself, it is a subdivision, and an integral part of, a global scheme for life-long education and learning.²⁶

The Recommendation defines the term 'life-long education and learning', to denote an overall scheme aimed both at restructuring the existing education system and at developing the entire educational potential outside the education system; creating an understanding of and respect for the diversity of customs and cultures, on both the national and the international planes; in such scheme men and women are the agents of their own education, through continual interaction between their thoughts and actions; education and learning, far from being limited to the period of attendance at school, should extend throughout life, include all skills and branches of knowledge, use all possible means, and allow all people for the full development of the personality; the educational and learning processes in which children, young people, and adults of all ages are involved in the course of their lives, in whatever form, should be considered as a whole.²⁷

According to this Recommendation, the aims of adult education should be to contribute to: promoting work for peace, international understanding and co-operation; developing a critical understanding of major contemporary problems and social changes and the ability to play an active part in the progress of society with a view to achieving social justice; promoting increased awareness of the relationship between people and their physical and cultural environment, and fostering the desire to improve the environment and to respect and protect nature, the common heritage and public property;

²⁶Recommendation on the Development of Adult Education, 1976, Para. 1.

²⁷ Ibid.

creating an understanding of and respect for the diversity of customs and cultures, on both the national and the international planes; promoting increased awareness of, and giving effect to various forms of communication and solidarity at the family, local, national, regional and international levels; developing the aptitude for acquiring, either individually, in groups or in the context of organized study in educational establishments specially set up, for this purpose, new knowledge, qualifications, attitudes or forms of behavior conducive to the full maturity of the personality; ensuring the individuals' conscious and effective incorporation into working life by providing men and women with an advanced technical and vocational education and developing the ability to create, either individually or in groups, new material goods and new spiritual or aesthetic values; developing the ability to grasp adequately the problems involved in the upbringing of children; developing the aptitude for making creative use of leisure and for acquiring any necessary or desired knowledge; developing the necessary discernment in using mass communication media, in particular radio, television, cinema and the press, and interpreting the various messages addressed to modern men and women by society; and developing the aptitude for learning to learn.²⁸

e) World Declaration on Education for All, 1990

According to this Declaration²⁹, 'every person – child, youth and adult – shall be able to benefit from educational opportunities designed to meet their basic learning needs. These needs comprise both essential learning tools (such as literacy, oral expression, numeracy, and problem-solving) and the basic learning content (such as knowledge, skills, values, and attitudes) required by human beings to be able to survive, to develop their full capacities, to live and work in dignity, to participate fully in the development, to improve the quality of their lives, to make informed decisions, and to continue learning.'³⁰

²⁸ Para 2(2).

²⁹ World Conference on Education for All: Meeting Basic Learning Needs. 1990. *World declaration on education for all and framework for action to meet basic learning needs adopted by the World Conference on Education for All: Meeting Basic Learning Needs, Jomtien, Thailand, 5-9 March 1990*. New York, N.Y.: Inter-Agency Commission (UNDP, UNESCO, UNICEF, World Bank) for the World Conference on Education for All.

³⁰ World Declaration on Education for All, 1990, Article 1(1).

f) Doha Declaration, 2015

The *Doha Declaration on Integrating Crime Prevention and Criminal Justice into the Wider United Nations Agenda to Address Social and Economic Challenges and to Promote the Rule of Law at the National and International Levels and Public Participation*³¹ emphasizes that that education for all children and youth, including the eradication of illiteracy, is fundamental to the prevention of crime and corruption and to the promotion of a culture of lawfulness that supports the rule of law and human rights while respecting cultural identities. In this regard, we also stress the fundamental role of youth participation in crime prevention efforts. Therefore, the participants declared their endeavour: to create a safe, positive and secure learning environment in schools, supported by the community, including by protecting children from all forms of violence, harassment, bullying, sexual abuse, and drug abuse, per domestic laws; to integrate crime prevention, criminal justice, and other rule-of-law aspects into our domestic educational systems; to integrate crime prevention and criminal justice strategies into all relevant social and economic policies and programmes, in particular those affecting youth, with a special emphasis on programmes focused on increasing educational and employment opportunities for youth and young adults; to provide access to education for all, including technical and professional skills, as well as to promote lifelong learning skills for all.³²

g) World Declaration on Higher Education for the Twenty-first Century, 1998

Notably, Higher Education plays a vital role in educating the current and next generation of leaders, driving the research agenda for both the public and private sectors, and playing a critical role in shaping the direction of national economies.³³ The World Declaration on Higher Education for the Twenty-first

³¹ ‘Doha Declaration on Integrating Crime Prevention and Criminal Justice into the Wider United Nations Agenda to Address Social and Economic Challenges and to Promote the Rule of Law at the National and International Levels, and Public Participation’ 22.

³² *Ibid*, para. 7.

³³ ‘Statement to the Education Post-COVID-19: Extraordinary Session of the Global Education Meeting | Department of Economic and Social Affairs’ <<https://sdgs.un.org/news/statement-education-post-covid-19-extraordinary-session-global-education-meeting-24726>> accessed 6 December 2020.

Century³⁴ affirms that the core missions and values of higher education, in particular the mission to contribute to the sustainable development and improvement of society as a whole, should be preserved, reinforced and further expanded, namely, to: educate highly qualified graduates and responsible citizens able to meet the needs of all sectors of human activity, by offering relevant qualifications, including professional training, which combine high-level knowledge and skills, using courses and content continually tailored to the present and future needs of society; provide opportunities for higher learning and for learning throughout life, giving to learners an optimal range of choice and a flexibility of entry and exit points within the system, as well as an opportunity for individual development and social mobility in order to educate for citizenship and for active participation in society, with a worldwide vision, for endogenous capacity-building, and for the consolidation of human rights, sustainable development, democracy and peace, in a context of justice; advance, create and disseminate knowledge through research and provide, as part of its service to the community, relevant expertise to assist societies in cultural, social and economic development, promoting and developing scientific and technological research as well as research in the social sciences, the humanities and the creative arts; help understand, interpret, preserve, enhance, promote and disseminate national and regional, international and historic cultures, in a context of cultural pluralism and diversity; help protect and enhance societal values by training young people in the values which form the basis of democratic citizenship and by providing critical and detached perspectives to assist in the discussion of strategic options and the reinforcement of humanistic perspectives; contribute to the development and improvement of education at all levels, including through the training of teachers.³⁵

The Higher Education Sustainability Initiative (HESI), is a partnership between the United Nations Department of Economic and Social Affairs,

³⁴ World Declaration on Higher Education for the Twenty-first Century: Vision and Action and Framework for Priority Action for Change and Development in Higher Education adopted by the World Conference on Higher Education Higher Education in the Twenty-First Century: Vision and Action, 9 October 1998.

³⁵ World Declaration on Higher Education for the Twenty-first Century, 1998, Article 1.

UNESCO, United Nations Environment, UN Global Compact's Principles for Responsible Management Education (PRME) initiative, United Nations University (UNU), UN-HABITAT, UNCTAD and UNITAR, created in 2012 in the run-up to the United Nations Conference on Sustainable Development (Rio+20).³⁶ HESI provides higher education institutions with a unique interface between higher education, science, and policy-making where these institutions commit to: teach sustainable development across all disciplines of study; encourage research and dissemination of sustainable development knowledge; green campuses and support local sustainability efforts; and engage and share information with international networks.³⁷

h) International Covenant on Economic, Social and Cultural Rights (ICESCR)

The International Covenant on Economic, Social, and Cultural Rights (ICESCR)³⁸ states that the 'States Parties to the present Covenant recognize the right of everyone to education. They agree that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms. They further agree that education shall enable all persons to participate effectively in a free society, promote understanding, tolerance, and friendship among all nations and all racial, ethnic or religious groups, and further the activities of the United Nations for the maintenance of peace'.³⁹

i) International Covenant on Civil and Political Rights

The International Covenant on Civil and Political Rights⁴⁰ provides that 'the States Parties to the present Covenant undertake to have respect for the liberty

³⁶ 'Higher Education Sustainability Initiative. Sustainable Development Knowledge Platform' <<https://sustainabledevelopment.un.org/sdinaction/hesi>> accessed 6 December 2020.

³⁷ Ibid.

³⁸ UN General Assembly, *International Covenant on Economic, Social and Cultural Rights*, 16 December 1966, United Nations, Treaty Series, vol. 993, p. 3.

³⁹ Ibid, Article 13(1).

⁴⁰ UN General Assembly, *International Covenant on Civil and Political Rights*, 16 December 1966, United Nations, Treaty Series, vol. 999, p. 171.

of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their convictions'.⁴¹

j) Convention on the Rights of the Child

The *Convention on the Rights of the Child*⁴² guarantees that 'States Parties recognize the right of the child to education, and to achieve this right progressively and based on an equal opportunity, they shall, in particular: make primary education compulsory and available free to all; encourage the development of different forms of secondary education, including general and vocational education, make them available and accessible to every child, and take appropriate measures such as the introduction of free education and offering financial assistance in case of need; make higher education accessible to all based on capacity by every appropriate means; make educational and vocational information and guidance available and accessible to all children, and take measures to encourage regular attendance at schools and the reduction of drop-out rates.'⁴³

k) Convention on the Elimination of Discrimination against Women (CEDAW)

CEDAW⁴⁴ provides that 'States Parties shall take all appropriate measures to eliminate discrimination against women in order to ensure to them equal rights with men in the field of education and in particular to ensure, on a basis of equality of men and women: 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; access to the same curricula, the same examinations, teaching staff with qualifications of the same standard and school premises and equipment of the same quality; the elimination of any stereotyped concept of the roles of men

⁴¹ Ibid, Article 18(4).

⁴² UN Commission on Human Rights, *Convention on the Rights of the Child*, 7 March 1990, E/CN.4/RES/1990/74.

⁴³ Ibid, Article 28(1).

⁴⁴ UN General Assembly, *Convention on the Elimination of All Forms of Discrimination against Women*, 18 December 1979, A/RES/34/180.

and women at all levels and in all forms of education by encouraging coeducation and other types of education which will help to achieve this aim and, in particular, by the revision of textbooks and school programmes and the adaptation of teaching methods; the same opportunities to benefit from scholarships and other study grants; the same opportunities for access to programmes of continuing education, including adult and functional literacy programmes, particularly those aimed at reducing, at the earliest possible time, any gap in education existing between men and women; the reduction of female student drop-out rates and the organization of programmes for girls and women who have left school prematurely; the same opportunities to participate actively in sports and physical education; and access to specific educational information to help to ensure the health and well-being of families, including information and advice on family planning.⁴⁵

l) African Charter on Human and Peoples' Rights

The *African Charter on Human and Peoples' Rights*⁴⁶ guarantees that every individual shall have the right to education.⁴⁷ Regarding the place of human rights in the education system, *Banjul Charter* states that States parties to the present Charter shall have the duty to promote and ensure through teaching, education, and publication, the respect of the rights and freedoms contained in the present Charter and to see to it that these freedoms and rights, as well as corresponding obligations and duties, are understood.⁴⁸

m) Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, 2003

The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, 2003⁴⁹ provides that as a way of eliminating discrimination against women, States Parties shall commit themselves to modify the social and cultural patterns of conduct of women and men through

⁴⁵ Ibid, Article 10.

⁴⁶ Organization of African Unity (OAU), *African Charter on Human and Peoples' Rights* ("Banjul Charter"), 27 June 1981, CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982).

⁴⁷ *African Charter on Human and Peoples' Rights* ("Banjul Charter"), Article 17.1.

⁴⁸ *African Charter on Human and Peoples' Rights* ("Banjul Charter"), Article 25.

⁴⁹ African Union, *Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa*, 11 July 2003.

public education, information, education, and communication strategies, to achieve the elimination of harmful cultural and traditional practices and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or stereotyped roles for women and men.

State Parties are also required to ensure equal enjoyment of the right to education by both men and women through, inter alia, taking all appropriate measures to eliminate all forms of discrimination against women and guarantee equal opportunity and access in the sphere of education and training.⁵⁰

n) Convention on the Rights of Persons with Disabilities

The *Convention on the Rights of Persons with Disabilities*⁵¹ states that States Parties recognize the right of persons with disabilities to education. To realize this right without discrimination and based on an equal opportunity, States Parties shall ensure an inclusive education system at all levels and lifelong learning directed to the full development of human potential and sense of dignity and self-worth, and the strengthening of respect for human rights, fundamental freedoms and human diversity; the development by persons with disabilities of their personality, talents, and creativity, as well as their mental and physical abilities, to their fullest potential; and enabling persons with disabilities to participate effectively in a free society.⁵²

o) 2030 Agenda on Sustainable Development Goals

The 2030 Agenda for Sustainable Development (SDGs)⁵³, which was adopted by all United Nations Member States in 2015 acknowledges the place of education in the sustainable development debate.⁵⁴ SDG Goal 4 requires that all State Parties should ensure inclusive and equitable quality education and promote lifelong learning opportunities for all. The corresponding Targets are that: by 2030, ensure that all girls and boys complete free, equitable and

⁵⁰ Ibid, Article 12.

⁵¹ UN General Assembly, *Convention on the Rights of Persons with Disabilities: resolution / adopted by the General Assembly, 24 January 2007, A/RES/61/106.*

⁵² Ibid, Article 24(1).

⁵³ UN General Assembly, *Transforming our world: the 2030 Agenda for Sustainable Development*, 21 October 2015, A/RES/70/1.

⁵⁴ 'Education | Department of Economic and Social Affairs'

<<https://sdgs.un.org/topics/education>> accessed 6 December 2020.

quality primary and secondary education leading to relevant and Goal-4 effective learning outcomes; by 2030, ensure that all girls and boys have access to quality early childhood development, care and preprimary education so that they are ready for primary education; by 2030, ensure equal access for all women and men to affordable and quality technical, vocational and tertiary education, including university; by 2030, substantially increase the number of youth and adults who have relevant skills, including technical and vocational skills, for employment, decent jobs and entrepreneurship; by 2030, eliminate gender disparities in education and ensure equal access to all levels of education and vocational training for the vulnerable, including persons with disabilities, indigenous peoples and children in vulnerable situations; by 2030, ensure that all youth and a substantial proportion of adults, both men and women, achieve literacy and numeracy; by 2030, ensure that all learners acquire the knowledge and skills needed to promote sustainable development, including, among others, through education for sustainable development and sustainable lifestyles, human rights, gender equality, promotion of a culture of peace and non-violence, global citizenship and appreciation of cultural diversity and of culture's contribution to sustainable development; build and upgrade education facilities that are child, disability and gender sensitive and provide safe, nonviolent, inclusive and effective learning environments for all; by 2020, substantially expand globally the number of scholarships available to developing countries, in particular least developed countries, small island developing States and African countries, for enrolment in higher education, including vocational training and information and communications technology, technical, engineering and scientific programmes, in developed countries and other developing countries; and by 2030, substantially increase the supply of qualified teachers, including through international cooperation for teacher training in developing countries, especially least developed countries and small island developing states.⁵⁵

3.2 Legal Framework Regarding the Right to Education in Kenya

As a result of the foregoing international normative framework on the realization of the right to education, and as a result of the outlined commitments to making education for all a reality, countries are expected to

⁵⁵ SDG 4 Targets 4.1-4.7(a)(b)(c).

put in place frameworks that related to enhancing the delivery, quality, and relevance of their education systems.⁵⁶

a) Constitution of Kenya 2010

In line with the Sustainable Development Goal 4 (the provision of quality education and Sustainable Development) and Goal 16 (Promote peaceful and inclusive societies for sustainable development, provide access to justice for all, and build effective, accountable, and inclusive institutions at all levels) the constitution of Kenya provides for the right of education to all children in and including the youth. Article 53 of the constitution of Kenya 2010 provides for the rights of children to the effect that every child has a right to free and compulsory basic education.

Article 54 of the Constitution guarantees that a person with any disability is entitled to: be treated with dignity and respect and to be addressed and referred to in a manner that is not demeaning; to access educational institutions and facilities for persons with disabilities that are integrated into society to the extent compatible with the interests of the person; to reasonable access to all places, public transport and information; to use sign language, braille or other appropriate means of communication; and to access materials and devices to overcome constraints arising from the person's disability. All these rights are important in access to education for persons with disabilities and should therefore be fully implemented in the spirit of realizing the right to nor this group of persons in the society.

The Constitution also secures the rights of the minorities and marginalized groups in society by guaranteeing that the State shall put in place affirmative action programmes designed to ensure that minorities and marginalized groups, inter alia, are provided special opportunities in educational and economic fields.⁵⁷

⁵⁶ UNESCO, 'The Right To Education - Law and Policy Review Guidelines' (UNESCO, 28 July 2014),⁵ <<https://en.unesco.org/news/right-education-law-and-policy-review-guidelines>> accessed 6 December 2020.

⁵⁷ Article 56, Constitution of Kenya 2010.

It has been argued that the African continent's youthful population presents a powerful opportunity for accelerated economic growth and innovation while other world regions face an aging population with subsequent issues such as high health costs for elderly care and high demand for skilled and qualified labour.⁵⁸ However, the same demographic group also presents economic and social challenges, as well as implications for peace and security.⁵⁹

By providing for the right of education to the youth, the Constitution envisions the provision of quality higher education to the youth considering that most, if not all, of the students learning at the tertiary institutions, are of the youth age bracket. The Constitution states that the state shall take measures, including affirmative action programmes, to ensure that the youth access relevant education and training and have opportunities to associate, be represented, and participate in political, social, economic, and other spheres of life. Through this, it is evident that the Government of Kenya has adopted the provision of education as the main pillar in the national development agenda. All that is required is the necessary funding and political goodwill.

Regarding the elderly in society, the Constitution provides that the State shall take measures to ensure the rights of older persons— fully participate in the affairs of society; and pursue their personal development.⁶⁰

b) Basic Education Act (2013)

The Basic Education Act, 2013⁶¹ was enacted to give effect to Article 53 of the Constitution and other enabling provisions; to promote and regulate free and compulsory basic education; to provide for accreditation, registration, governance, and management of institutions of basic education; to provide for the establishment of the National Education Board, the Education Standards and Quality Assurance Commission, and the County Education Board and for connected purposes.⁶²

⁵⁸ 'Youth Empowerment | Office of the Special Adviser on Africa, OSAA' <<https://www.un.org/en/africa/osaa/peace/youth.shtml>> accessed 7 December 2020.

⁵⁹ Ibid.

⁶⁰ Article 57, Constitution of Kenya 2010.

⁶¹ Basic Education Act, No 14 of 2013, Laws of Kenya.

⁶² Ibid, Preamble.

The Act provides for various forms of education intended for a different group of people.

The Act defines “adult and continuing education” to mean the learning processes within the perspective of lifelong learning in which an adult or out-of-school youth is granted an opportunity in an institution of basic education for purposes of developing abilities, enriching knowledge, and improving skills.⁶³

“Adult basic education” is used under the Act to mean basic education offered as a full-time or part-time course to a person who is above the age of eighteen years and includes education by correspondence, the media of mass communication, and the use of libraries, museums, exhibitions or other means of visual or auditory communication for educational purposes and “Adult learning” shall be construed accordingly.⁶⁴

“Basic education” is used to mean the educational programmes offered and imparted to a person in an institution of basic education and includes Adult basic education and education offered in pre-primary educational institutions and centres.⁶⁵

“Formal education” under the Act refers to the regular education provided in the system of schools and other formal educational institutions.⁶⁶

“Non-formal education” is used to refer to any organized educational activity taking place outside the framework of the formal education system and targets specific groups/categories of persons with life skills, values, and attitudes for personal and community development.⁶⁷

“Institution of basic education and training” under the Act means a public or private institution or facility used wholly or partly, regularly or periodically

⁶³ Ibid, sec. 2.

⁶⁴ Ibid, sec. 2.

⁶⁵ Basic Education Act, sec. 2.

⁶⁶ Ibid, sec. 2.

⁶⁷ Ibid, sec. 2.

for conducting basic education and training and includes a school, a tuition facility, an educational centre, an academy, a research institution, a school correctional facility or a borstal institution.⁶⁸

The Act envisages “special education needs” which means conditions, physical, mental or intellectual conditions with substantial and long term adverse effects on the learning ability (other than exposure) or the needs of those who learn differently or have disabilities that prevent or hinder or make it harder for them to access education or educational facilities of a kind generally provided for learners of the same age in the formal education system.⁶⁹

It also provides for “special needs education” which includes education for gifted or talented learners as well as learners with disability and includes education which provides appropriate curriculum differentiation in terms of content, pedagogy, instructional materials, alternative media of communication or duration to address the special needs of learners and to eliminate social, mental, intellectual, physical or environmental barriers to learners.⁷⁰

The provision of basic education under the Act is to be guided by the following values and principles: the right of every child to free and compulsory basic education; equitable access for the youth to basic education and equal access to education or institutions; promotion of quality and relevance; accountability and democratic decision making within the institutions of basic education; protection of every child against discrimination within or by an education department or education or institution on any ground whatsoever; protection of the right of every child in a public school to equal standards of education including the medium of instructions used in schools for all children of the same educational level; without prejudice to paragraph (f) above, advancement and protection of every child in pre-primary and lower primary level of education to be instructed in the language of his or her choice where

⁶⁸ Ibid, sec. 2.

⁶⁹ Ibid, sec. 2.

⁷⁰ Ibid, sec. 2.

this is reasonably practicable; encouraging independent and critical thinking; and cultivating skills, disciplines and capacities for reconstruction and development; promotion of peace, integration, cohesion, tolerance, and inclusion as an objective in the provision of basic education; elimination of hate speech and tribalism through instructions that promote the proper appreciation of ethnic diversity and culture in society; imparting relevant knowledge, skills, attitudes and values to learners to foster the spirit and sense of patriotism, nationhood, unity of purpose, togetherness, and respect; promotion of good governance, participation and inclusiveness of parents, communities, private sector and other stakeholders in the development and management of basic education; transparency and cost effective use of educational resources and sustainable implementation of educational services; ensuring human dignity and integrity of persons engaged in the management of basic education; promoting the respect for the right of the child's opinion in matters that affect the child; elimination of gender discrimination, corporal punishment or any form of cruel and inhuman treatment or torture; promoting the protection of the right of the child to protection, participation, development and survival; promotion of innovativeness, inventiveness, creativity, technology transfer and an entrepreneurial culture; non-discrimination, encouragement and protection of the marginalised, persons with disabilities and those with special needs; enhancement of co-operation, consultation and collaboration among the Cabinet Secretary, Teachers Service Commission, the National Education Board, the County Education Boards, the education and training institutions and other related stakeholders on matters related to education; and provision of appropriate human resource, funds, equipment, infrastructure and related resources that meet the needs of every child in basic education.⁷¹

The Act establishes a National Education Board⁷² and a County Education Board for every county⁷³ all of which should facilitate close working relations between the National and County governments in discharging their mandates

⁷¹ Basic Education Act, sec. 4.

⁷² *Ibid*, sec. 5.

⁷³ *Ibid*, sec. 17.

towards the realization of the right to free and compulsory basic education for all.⁷⁴

The National Government should, through the Cabinet Secretary: provide free compulsory basic education to every child; ensure compulsory admission and attendance of children of compulsory school age at school or an institution offering basic education; ensure that children belonging to marginalized, vulnerable or disadvantaged groups are not discriminated against and prevented from pursuing and completing basic education; provide human resource including adequate teaching and non-teaching staff according to the prescribed staffing norms; provide infrastructure including schools, learning and teaching equipment and appropriate financial resources; ensure quality basic education conforming to the set standards and norms; provide special education and training facilities for talented and gifted pupils and pupils with disabilities; ensure compulsory admission, attendance and completion of basic education by every pupil; monitor functioning of schools; advise the national government on financing of infrastructure development for basic education; and provide free, sufficient and quality sanitary towels to every girl child registered and enrolled in a public basic education institution who has reached puberty and provide a safe and environmentally sound mechanism for disposal of the sanitary towels.⁷⁵

Notably, the Act not only provides for adequate structures and government obligations towards the provision of the right to education but also makes provisions for different forms of education targeting different groups of learners and their needs. The Act mainly requires adequate funding and goodwill in its implementation.

c) Technical and Vocational Education and Training Act, 2013

The Technical and Vocational Education and Training Act, 2013⁷⁶ was enacted to provide for the establishment of a technical and vocational education and training system; to provide for the governance and management

⁷⁴ Ibid, sec. 28.

⁷⁵ Ibid, sec. 39.

⁷⁶ Technical and Vocational Education and Training Act, No. 29 of 2013, Laws of Kenya.

of institutions offering technical and vocational education and training; to provide for coordinated assessment, examination, and certification; to institute a mechanism for promoting access and equity in training; to assure standards, quality, and relevance; and for connected purposes.⁷⁷

In the discharge of its functions and exercise of their powers under this Act, the implementing authorities are to be guided by following principles: training shall be availed to all qualified Kenyans without discrimination; there shall be instituted appropriate mechanisms to promote access, equity, quality and relevance in training to ensure adequate human capital for economic, social and political development; training programmes shall take into account—(i) the educational, cultural and social-economic background of the people; (ii) the technical and professional skills, knowledge and levels of qualification needed in the various sectors of the economy and the technological and structural changes to be expected; (iii) the trends towards integration of information and communication technologies to multiply access and improve training capacity, delivery modes and life-long employability of graduates; (iv) the employment opportunities, occupational standards and development prospects at the international, national, regional and local levels; and (v) the protection of the environment and the common heritage of the country.⁷⁸

The Act prohibits discrimination on grounds of race, colour, gender, religion, national or social origin, political or other opinions, economic status, or any other ground save as provided under this Act.⁷⁹

d) Teachers Service Commission Act, 2012

The Teachers Service Commission Act, 2012⁸⁰ as enacted to make further provision for the Teachers Service Commission established under Article 237 of the Constitution, its composition; functions and powers; the qualifications and procedure for appointment of members; and connected purposes.⁸¹ In addition to the functions set out in Article 237 of the Constitution, the

⁷⁷ Ibid, Preamble.

⁷⁸ Ibid, sec. 3(1).

⁷⁹ Ibid, sec. 3(2).

⁸⁰ Teachers Service Commission Act, No. 20 of 2012, Laws of Kenya.

⁸¹ Ibid, Preamble.

Commission shall: formulate policies to achieve its mandate; provide strategic direction, leadership, and oversight to the secretariat; ensure that teachers comply with the teaching standards prescribed by the Commission under this Act; manage the payroll of teachers in its employment; facilitate career progression and professional development for teachers in the teaching service including the appointment of headteachers and principals; monitor the conduct and performance of teachers in the teaching service; and do all such other things as may be necessary for the effective discharge of its functions and the exercise of its powers.⁸²

e) Higher Education Loans Board Act, 1995

The Higher Education Loans Board Act, 1995⁸³ was enacted to provide for the establishment of a Board for the management of a Fund to be used for granting loans to assist Kenyan students to obtain higher education at recognized institutions within and outside Kenya and for matters incidental thereto and connected therewith.⁸⁴ “Higher education” under the Act means any course of education offered by an institution above the standard of Kenya Certificate of Secondary Education or any equivalent certificate approved by the Board.⁸⁵

4. The Right to Education in Practice: Challenges Facing Provision of Right to Education Sector in Kenya

Despite the positive steps made by successive governments in Kenya towards ensuring that all persons have access to inclusive and quality education in the country, many children of school-going age are still unable to access education opportunities and are still out of school as well as many other adults who are deprived of learning opportunities.⁸⁶

⁸² Ibid, sec. 11.

⁸³ Higher Education Loans Board Act, No. 3 of 1995, Laws of Kenya.

⁸⁴ Ibid, preamble.

⁸⁵ Ibid, sec. 2.

⁸⁶ ‘Impact of Covid-19 on Children’s Education in Africa’ (*Human Rights Watch*, 26 August 2020) <<https://www.hrw.org/news/2020/08/26/impact-covid-19-childrens-education-africa>> accessed 7 December 2020; ‘COVID-19: At Least a Third of the World’s Schoolchildren Unable to Access Remote Learning during School Closures, New Report Says’ <<https://www.unicef.org/press-releases/covid-19-least-third-worlds-schoolchildren-unable-access-remote-learning-during>> accessed 7 December

The situation may be attributed to many challenges which include but may not be limited to social, cultural, and economic factors.⁸⁷ It is estimated that sub-Saharan Africa has the highest rates of education exclusion, with about 97.5 million children and adolescents being out of school in the sub-Saharan Africa region.⁸⁸ It has been argued that without an urgent will and combined resources and efforts, the situation will likely get worse as the region faces a rising demand for education due to a still-growing school-age population.⁸⁹

As of April 2016, UNESCO Observatory on the Right to Education raised their concern that ‘that the State party had not dedicated sufficient resources to financing school facilities and qualified teachers, and to ensure effective enjoyment of the right to free primary education for all.’⁹⁰ The Committee on Economic, Social and Cultural Rights was also concerned that inadequacies in the public schooling system had led to the proliferation of so-called “low-cost private schools”, which has led to segregation or discriminatory access to education, particularly for disadvantaged and marginalized children, including children living in informal settlements and arid and semi-arid areas.⁹¹

Some of the other challenges that have been identified regarding the education system in Kenya include very low school enrolment and completion rate in the arid and semi-arid areas and urban informal settlements, as well as low retention rate of teachers in these areas which undermines the quality of education; higher barriers faced by girls, compared to boys, in obtaining education due to heavy domestic workloads, adolescent marriages, and pregnancies, negative societal attitudes towards the importance of educating

2020; ‘Children of Kenya’ (*Humanium*) <<https://www.humanium.org/en/kenya/>> accessed 7 December 2020.

⁸⁷ *Ibid.*

⁸⁸ ‘Why Africa Needs to Ensure Inclusive and Equitable Quality Education and Lifelong Learning for All | Blog | Global Partnership for Education’ <<https://www.globalpartnership.org/blog/why-africa-needs-ensure-inclusive-and-equitable-quality-education-and-lifelong-learning-all>> accessed 7 December 2020.

⁸⁹ *Ibid.*

⁹⁰ ‘Database on the Right to Education | Observatory on the Right to Education’, para. 57 <<http://www.unesco.org/education/edurights/index.php?action=countries&lng=en>> accessed 6 December 2020.

⁹¹ *Ibid.*, para. 57.

the girl child as well as unaffordable menstrual protection and sanitary wear and lack of sanitation facilities in schools; the Basic Education Act (2013) allows schools to charge tuition fees to non-Kenyan citizens; low quality of education and rapid increase of private and informal schools, including those funded by foreign development aids, providing sub-standard education and deepening inequalities.⁹²

5. Towards Inclusive and Quality Education as a Tool for Empowerment in Kenya

The achievement of the right to inclusive and quality education plays an important role in the achievement of many other rights and freedoms which all jointly are imperative for the empowerment of individuals and communities in general.⁹³ This section offers some recommendations that the Government and other stakeholders should consider to enhance the realization of the right to inclusive and quality education for all.

5.1. Equality and Equity in Provision of Education Services

Considering the need to address non-discrimination in education, and the fact that the State has the primary responsibility in ensuring the right to education, the UNESCO Committee on Economic, Social and Cultural Rights recommended that the State party should take all the measures necessary to strengthen its public education sector. The State party should increase the budget allocated to primary education and take all the measures necessary to improve access to and the quality of primary education for all without hidden

⁹² ‘Database on the Right to Education | Observatory on the Right to Education’, para. 56 <<http://www.unesco.org/education/edurights/index.php?action=countries&lng=en>> accessed 6 December 2020.

⁹³ ‘A Human Rights-Based Approach to Education for All: A Framework for the Realization of Children’s Right to Education and Rights within Education - UNESCO Digital Library’ <<https://unesdoc.unesco.org/ark:/48223/pf0000154861>> accessed 7 December 2020; ‘Quality Education for All: A Human Rights Issue - UNESCO Digital Library’ <<https://unesdoc.unesco.org/ark:/48223/pf0000150273>> accessed 7 December 2020; Peters S, ‘Inclusive Education: Achieving Education for All by Including Those with Disabilities and Special Education Needs’.

costs, particularly for children living in informal settlements and arid and semi-arid areas.⁹⁴

The UNESCO Committee also recommended that the State party bring the Registration Guidelines for Alternative Provision of Basic Education and Training in line with articles 13 and 14 of the Covenant and other relevant international standards; that it ensures that all schools, public, private, formal or non-formal, are registered; and that it monitors their compliance with the Guidelines.⁹⁵

While noting the measures taken to assist children who have left school to continue to study, the Committee on Economic, Social, and Cultural Rights reiterates its concern at the large number of children dropping out of school, particularly girls due to early marriage and pregnancy.⁹⁶ It went further to recommend that the State party take the measures necessary to address the underlying reasons why children drop out of school, to intensify its efforts to prevent students from doing so, and to bring those children back to school to complete their education.⁹⁷

It has been noted that in Kenya, it is estimated that 2.2% (0.9 million people) live with some form of disability (Kenya Population and Housing Census, 2019). PWDs are among the most vulnerable populations in Kenya. They are more likely to suffer opportunistic infections, lack employment, lack adequate livelihood opportunities, live in precarious conditions, and normally are dependent on their families and community for their living.⁹⁸ Even in school, children with disabilities may fail to attend school because of unsuitable school buildings. Besides, the limited understanding within their communities

⁹⁴ ‘Database on the Right to Education | Observatory on the Right to Education’, para. 58 <<http://www.unesco.org/education/edurights/index.php?action=countries&lng=en>> accessed 6 December 2020.

⁹⁵ *Ibid*, para. 58.

⁹⁶ *Ibid*, para. 59.

⁹⁷ *Ibid*, para. 60.

⁹⁸ Kigundu Nicholas, ‘NGEC Calls for Proactive Action to Protect Persons with Disabilities’ (*KBC | Kenya’s Watching*, 2 December 2020) <<https://www.kbc.co.ke/ngec-calls-for-proactive-action-to-protect-persons-with-disabilities/>> accessed 6 December 2020.

and among teachers about their learning needs affect the quality of education they receive, an outcome often fuelled by prejudices around disability.⁹⁹ There is a need for the Government of Kenya to not only invest in but also to ensure that education is available to all regardless of their social status in society and devoid of any form of discrimination as envisaged under Article 27 of the Constitution of Kenya which guarantees that every person is equal before the law and has the right to equal protection and equal benefit of the law, which equality includes the full and equal enjoyment of all rights and fundamental freedoms. Those with special needs should also have their needs in education taken care of.

Non-formal education holds opportunities for ensuring equality and equity in providing education to the different types of students and groups of people in the country. For instance, it has been argued that non-formal education can ensure that out-of-school children can access opportunities. In some cases, non-formal education programs can bridge children back into the formal education system. For young mothers or girls who have been married early, non-formal education can address their unique needs.¹⁰⁰

Access to education for all is guaranteed under the law. It being a right as enshrined in the Constitution, everyone is entitled to go to school regardless of gender. There is no gender discrimination and, the same Constitution of Kenya, 2010 under Article 27 provides for equality and freedom from discrimination. It has been observed especially that early childhood care and pre-primary education are vital components of a quality education that are of critical value for the early socialization of gender equality. Quality education must be gender-sensitive at a minimum and aim to be gender transformative by transforming harmful gender stereotypes, norms, and biases in schools and society more broadly.¹⁰¹

⁹⁹ ‘Inclusive Education for Children with Disabilities’ (*Plan International*) <<https://plan-international.org/education/inclusive-education-children-disability>> accessed 7 December 2020.

¹⁰⁰ ‘The Right to Inclusive, Quality Education’ (*Plan International*) <<https://plan-international.org/education/right-inclusive-quality-education>> accessed 7 December 2020.

¹⁰¹ Ibid.

5.1 Comprehensive Compliance with the Legislation and Adequate Funding Opportunities for Inclusive Education

Ideally, education should be a tool for empowerment and should therefore meet the international standards on education. While reviewing the state of education, including vocational training and guidance in Kenya as of April 2016, regarding the Committee's general comment No. 1 (2001) on the aims of education, the Committee recommended that Kenya should: prioritize the elimination of geographical and gender disparities through targeted programmes and resource allocations that improve primary access, completion rates, retention and transition to secondary school; guarantee the legal right to free mandatory education for all, without direct or hidden costs, including non-Kenyan citizens such as in particular refugee children. In doing so, prioritize free primary quality education at public schools over private schools and informal low-cost schools and regulate and monitor the quality of education provided by private informal schools in line with the Convention; address root causes of low educational attainment of girls, including stereotypes discriminatory against girls and harmful practices.¹⁰²

5.2 Use of Technology in the Education Sector in Kenya

Notably, some of the challenges facing the education sector in the country relate to affordability, availability, and accessibility. Some of these challenges may be solved by integrating information technology in the education system delivery mode.

As technological advancements take root across the world, teaching and learning are moving towards the adoption of certain types of digital learning concepts, where new methods of learning will replace traditional individual classroom learning.¹⁰³

¹⁰² 'Database on the Right to Education | Observatory on the Right to Education' <<http://www.unesco.org/education/edurights/index.php?action=countries&lng=en>> accessed 6 December 2020.

¹⁰³ Vikram R Jadhav, Tushar D Bagul and Sagar R Aswale, 'COVID-19 Era: Students' Role to Look at Problems in Education System during Lockdown Issues in Maharashtra, India', International Journal of Research and Review, Vol.7; Issue: 5; May 2020.

Recent studies conducted in developed countries on the impact of technology in learning, focusing on remedial and low-achieving students, have shown gains of 80 percent for reading and 90 percent for math when computers were used to assist in the learning process; multimedia instruction models, aided by digital learning, found to save more time by up to 30 percent compared with conventional teaching methods such as board and chalk; and technology also improved achievement and cost savings of 30 to 40 percent, and had a direct positive link between the amount of interactivity provided and instructional effectiveness.¹⁰⁴ Also, students using technology as an education tool become more engaged in the process and more interested in growing their knowledge base.¹⁰⁵ Interactive solutions also boost retention rates and test scores, being far more engaging and memorable than voluminous textbooks; provide better context, a greater sense of perspective, and more arresting activities that allow them to better connect with students, and also frequently offer a more interesting and involving way to assimilate information.¹⁰⁶ Digital learning has thus been found to offer an unprecedented ability to provide educational experiences that are tailor-made for each student.¹⁰⁷

According to reports by the UNDP, school closures have affected over 90 percent of the world's student population — 1.6 billion children and youth. As a result, accounting for the inability to access the internet for remote learning, this could result in out-of-school rates in primary education not seen since the mid-1980s, setbacks that are especially worrisome as they can translate into life-long deficits, perpetuating inequalities across generations.¹⁰⁸ Remote access to education by students has never been more needed than during the COVID-19 pandemic period. It is estimated that during the

¹⁰⁴ Patricia King'ori, 'How Technology Can Solve Challenges in Education Sector' (*The Standard*)

<<https://www.standardmedia.co.ke/sci-tech/article/2001271511/could-technology-be-the-answer-to-our-education-challenges>> accessed 6 December 2020.

¹⁰⁵ Ibid.

¹⁰⁶ Ibid.

¹⁰⁷ Ibid.

¹⁰⁸ 'Sustainable Development Outlook 2020: Achieving SDGs in the Wake of COVID-19: Scenarios for Policymakers' 58, 14

< https://sdgs.un.org/sites/default/files/2020-07/SDO2020_Book.pdf> accessed 6 December 2020.

COVID-19 pandemic, many schools are offering remote learning to students through virtual classrooms to mitigate the impact of school closures.¹⁰⁹ However, while this is an option for some, it is out of reach for many who lack access to computers and the Internet at home, as well as a low level of computer-related skills, all of which put many already marginalized students at a further disadvantage.¹¹⁰

It is therefore imperative that the government salvages the situation and avoid more children being affected through continuous investment in and full implementation of the government's *Digital Literacy Programme* which will see more children especially from the marginalized and far-flung areas in the country.¹¹¹ The programme which was started by the government in 2013 aims at ensuring pupils in standard one to three can use digital technology and communication tools in learning with an overarching objective of transforming learning in Kenya into a 21st Century education system.¹¹² Considering that the tablets and other gadgets meant for the Programme are being assembled locally by the Jomo Kenyatta University of Agriculture and Technology (JKUAT) and Moi University, there is a need for these

¹⁰⁹ Amit Kumar Arora and R Srinivasan, 'Impact of Pandemic COVID-19 on the Teaching-Learning Process: A Study of Higher Education Teachers' (2020) 13 Prabandhan: Indian Journal of Management 43.

¹¹⁰ United Nations Department For Economic And Social Affairs, *Sustainable Development Goals Report 2020*. (United Nations 2020) 33.

¹¹¹ Web Admin, 'Digital Literacy Programme on Course, Says ICT CS' (*Ministry of Information, Communications and Technology*) <<https://ict.go.ke/digital-literacy-programme-on-course-says-ict-cs/>> accessed 6 December 2020; 'DigiSchool – ICT Authority' <<http://icta.go.ke/digischool/>> accessed 6 December 2020; 'Update On The Digital Literacy Programme Being Implemented By The ICT Authority – ICT Authority' <<http://icta.go.ke/update-on-the-digital-literacy-programme-being-implemented-by-the-ict-authority/>> accessed 6 December 2020; Staff Writer, 'Government Spends Sh27billion in Digital Literacy Programme' (*CIO East Africa*, 15 May 2019) <<https://www.cio.co.ke/government-spends-sh27billion-in-digital-literacy-programme/>> accessed 6 December 2020; 'Bringing the Digital Revolution to All Primary Schools in Kenya' <<https://www.itu.int/en/myitu/News/2020/05/29/09/24/Bringing-the-digital-revolution-to-all-primary-schools-in-Kenya>> accessed 6 December 2020.

¹¹² Web Admin, 'Digital Literacy Programme on Course, Says ICT CS' (*Ministry of Information, Communications and Technology*) <<https://ict.go.ke/digital-literacy-programme-on-course-says-ict-cs/>> accessed 6 December 2020.

universities and other institutions of higher learning to be supported through funding and political goodwill as well as through cooperation with international organizations and initiatives such as Higher Education Sustainability Initiative (HESI) to make these initiatives more successful. Notably, The Digital Literacy Programme “Digischool” is also considered as a key deliverable under the Kenya Vision 2030.¹¹³

The adoption of robust curricula that provides for quality education and training is the key to the transformation of the country through technological innovation and the shift from knowledge reproduction to knowledge production which will eventually empower learners and communities as part of sustainable development.

5.3 Incorporating Customary and Indigenous Knowledge into the Formal and Non-Formal Education Curricula

The Constitution of Kenya recognizes culture as the foundation of the nation and as the cumulative civilization of the Kenyan people and nation.¹¹⁴

Where possible, it is important that schools, including institutions of higher learning, ensure that their students appreciate and understand the place of indigenous knowledge in the development discourse to give them wider choices in life.

Kenyan universities and especially the University of Nairobi boasts of robust curriculums that incorporate and encourage innovation. The University of Nairobi, for instance, does not just teach formal education but it also allows the students to be taught on a first-hand basis informally. They have incorporated clinical internships and externships in their curriculum. With this, the students can go for fieldwork where they interact with local members of the society such as the village elders where they get to learn about and

¹¹³ Republic of Kenya, *Digital Literacy Programme Management Guidelines*, September, 2016, 4

<https://publicadministration.un.org/unpsa/Portals/0/UNPSA_Submitted_Docs/2018/F6520F09-6F26-48A7-852D-2EFB5991C720/DIGISCHOOL%20GUIDELINES%20VERSION%202.pdf?ver=1439-05-26-155541-053> accessed 6 December 2020.

¹¹⁴ Article 11, Constitution of Kenya, 2010.

appreciate the customs of the society and/or different community settings. Through this, the students have an opportunity of knowing and learning the customary laws which form part of the laws of Kenya. Article 2 of the constitution embraces customary law as a form of law in Kenya. This is affirmed by Article 159 of the constitution which provides for the application of customary laws unless the same is repugnant to justice.

It is through such units as clinical externships being offered to the students that the learners can acquire the knowledge and skills needed to promote sustainable development through education for sustainable development and sustainable lifestyles, human rights, gender equality, promotion of a culture of peace and non-violence and appreciation of cultural diversity.

At the Wangari Maathai Institute of Environmental Studies (WMI), University of Nairobi, lecturers have an opportunity to impart skills necessary for sustainable development. It is an opportunity and platform that lecturers should and indeed use to impact and transform future generations by teaching them the nexus between education, peace, democracy, and environmental freedom, among other sustainable development concepts.

5.4 Crisis-Sensitive Education Planning for Future Peace and Stability

It has been observed that the consequences, whether from conflict, natural hazards, climate change, or epidemics, are severe for many sectors and societies, and the education sector is no exception since it may suffer from: the destruction of school infrastructure, a reduction in the number of teachers, an increase in gender disparities, or overall system dysfunction.¹¹⁵ There is a need for the Government to continually invest in peacebuilding efforts as part of ensuring that children from all parts of the country enjoy a peaceful learning environment. This is because the detrimental effects of crises on education systems – in terms of access, quality, equity, and management – and on learning cannot be underestimated since children and young people growing

¹¹⁵ ‘Crisis-Sensitive Education Planning’ (*IIEP-UNESCO*, 21 November 2014) <<http://www.iiep.unesco.org/en/our-expertise/crisis-sensitive-education-planning>> accessed 6 December 2020.

up in fragile and conflict-affected places are more than twice as likely to be out of school as their peers who live in safe and stable environments.¹¹⁶

Education can play a critical role in the prevention of future disasters and conflicts and the construction of peace. The Government should thus incorporate crisis-sensitive educational planning in its peace and education policies, which has been defined as involving:

‘Identification and analysis of the risks to education posed by conflict and natural hazards. This means understanding: how these risks impact education systems; and, how education systems can reduce their impact and occurrence. The aim is to lessen the negative impact of crises on education service delivery while at the same time fostering the development of education policies and programmes that will help prevent future crises arising in the first place’.¹¹⁷

6 Conclusion

There is a higher need than ever before for the Government to concentrate more on investment in education and training as part of its efforts towards the realization of sustainable development agenda and the country’s development blueprint, Vision 2030.

If the right to quality and inclusive education for individual and community empowerment is to be realized, then there is a need for strong national legal and policy frameworks that lay the foundation and conditions for the delivery and sustainability of good quality education. Education holds great potential in addressing most of the problems that slow down the realization of sustainable development goals and eventual empowerment of individuals, such as poverty, injustice, inclusivity, environmental degradation, among others.

Inclusive and quality education is indeed a tool for empowerment for the present and future generations.

¹¹⁶ Ibid.

¹¹⁷ Ibid.

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