OBJECTS OF PITY OR INDIVIDUALS WITH RIGHTS: THE RIGHT TO EDUCATION FOR CHILDREN WITH DISABILITIES

OCCASIONAL REPORT

PREPARED BY: KENYA NATIONAL COMMISSION ON HUMAN RIGHTS

2007

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LIST OF ABBREVIATIONS

CRC:	Convention on the Rights of the Child
CDF:	Constituencies Development Fund
DEO:	District Education Officer
EARCs:	Educational Assessment and Resource Centres
EFA:	Education for All
EO:	Education Officer
FPE:	Free Primary Education
ICCPR:	International Covenant on Civil and Political Rights
ICESCR:	International Covenant on Economic, Social and Cultural Rights
ICRP	International Convention on the Rights of Persons with Disabilities
IEP:	Individualised Educational Programme
KIE:	Kenya Institute of Education
KISE:	Kenya Institute for Special Education
KNCHR.	Kenya National Commission on Human Rights
KNEC:	Kenya National Examinations Council
KSMH:	Kenya Society for the Mentally Handicapped
NCPD:	National Council for Persons with Disabilities
NGOs:	Non Governmental Organisations
SEO:	Senior Education Officer
SR:	Standard Rules on Equalization of Opportunities for Persons with Disabilities
SNE·	Special Needs Education
TSC:	Teachers Service Commission
UDHR.	Universal Declaration on Human Rights
UDPK·	United Disabled Persons of Kenya
VSO·	Voluntary Services Overseas
WPA·	World Programme of Action Concerning Disabled Persons

FOREWORD

The Kenya National Commission on Human Rights (KNCHR)'s core mandates of promoting and protecting human rights are geared towards establishment and defence of democracy in Kenya. Democracy in Kenya is incomplete when any percentage of its population is unable to undertake its responsibilities of nation building by being full participants in national development.

The poverty levels which persons with disabilities face are far higher relative to the rest of society. The opportunities for livelihood available to a disabled person are less obvious since disability undermines the actual or perceived ability of a person to interact in educational, economic, social or indeed political arenas. Poverty itself breeds disability and disability is a harbinger for more poverty The KNCHR realises that breaking this poverty trap calls for conscious and concerted efforts by society to ensure and effect the rights of persons with disabilities, in particular, the right to education; since it is clear that education is a key means for poverty alleviation, personal growth and development.

The KNCHR recognises that persons with disabilities expect and require that their exercise of human rights should be protected and promoted on an equal basis with their non-disabled peers. Disability, then, is quite clearly a central human rights issue.

This study emerged from complaints lodged at theKNCHR alleging violations of the right to education for children with disabilities. In the course of responding to these petitions, the KNCHR felt the need to undertake a study to establish the extent of the violations and make concrete recommendations for redress. The study was informed by the need to ensure, at the operational level, that the right to education for persons with disabilities would be actualised in reality from mere abstract rights.

Achieving the right to education for children with disabilities is necessary, among other things, so as to realise the Jomtien and Dakar Declarations and the Millennium Development Goal on Education for All (EFA) by 2015. The Government, therefore, needed to put in place positive measures to facilitate access to education by children with disabilities by addressing the obstacles to equal rights to education.

A number of studies (including Commissions and Task Forces on education) have analysed and made recommendations covering education of children with disabilities However, a principal novelty of this study is its assessment of issues of education for persons with disabilities from a human rights perspective. This study addresses education as a basic and core right of persons with disabilities, and analyses the Government's obligations in ensuring the realisation and implementation of this right

EXECUTIVE SUMMARY

The Kenya National Commission on Human Rights (hereinafter "the KNCHR" or "National Commission") has prepared this Occasional Paper as part of its statutory mandate under the Kenya National Commission on Human Rights Act, 2002, to advise the Government on matters of human rights, including making recommendations for policy and legislative reforms. This report is prepared with the core aim of advising the Government, including the President and Legislature, on policy, legislative and administrative reforms needed to enhance the right to education for persons with disabilities.

This study was undertaken following complaints brought to the Commission alleging violation of the right to education of children with disabilities. These allegations presented themselves in terms of denial of admission or expulsion from regular schools on the basis of disability as well as the failure of the Government to fund some special schools After undertaking initial investigations into the complaints, the National Commission decided to undertake wider research in order to establish the systemic nature of the problems confronting education for children with disabilities. This enabled the Commission to make more concrete recommendations for redress.

Key Objectives

The core objectives of the study were to assess the extent to which children with disabilities were accessing the right to education. The study also sought to assess the policy, legislative and administrative gaps surrounding the exercise of this right. The study process involved review of the policy and legal framework on education for children with disabilities vis-à-vis international human rights standards and norms. The study team engaged in dialogue with among others, government officers, non-governmental organisations and schools (both teachers and students) in special and regular schools. The study's challenges included the difficulty in interviewing pupils with intellectual/ mental disabilities. The team faced difficulties explaining to them concepts such as free primary education (FPE) or inclusive versus segregated education

Key conclusion

A key conclusion of this report is that facilitating exercise of the right to education for persons with disabilities entails the removal of policy, legislative and administrative obstacles through either review of current legislation and/or formulation of specific new policies and legislation. The current legislative and policy framework undermines effective exercise of the right to education by children with disabilities. The practice regarding the framework of FPE and curriculum implementation is wanting and raises additional obstacles to the exercise of the right to education by children with disabilities.

Key findings

- The current legal and policy framework governing education does not adequately address education for children with disabilities. The Education Act itself is outdated and does not address the special needs of children with disabilities. At the same time, there is an absence of a specific policy framework to govern education for children with disabilities.
- Only a small percentage of children with disabilities attend school. Whereas FPE has enhanced access to education generally, the same cannot be said of children with disabilities whose education is grossly under-resourced.
- There is no curriculum specifically designed for teaching children with intellectual disabilities. Teachers are forced to use curricula adapted from the regular school curricula. The absence of specific curricula constitutes discrimination against children with disabilities, both in prioritisation by the Government as well as in the provision of quality education.
- Teaching children with disabilities goes beyond regular school teaching responsibilities to include social work and childcare. However, many teachers, besides regular teacher training, have no additional training in special needs education. Similarly, many special schools lack adequate teachers causing teachers in those schools to be overworked compared to their counterparts in regular schools without consequent equal compensation.
- The Ministry of Education's Quality Assurance and Standards Division do not regularly inspect special schools Where inspection is undertaken, the officers lack expertise and do not understand what they should be inspecting. Inspectors are therefore unable to come up with concrete findings and recommendations to enhance education provision for children with disabilities.
- Finally, there is still limited awareness regarding issues of disability, with stigma still attached to persons with disabilities. This is despite the fact that the National Council for Persons with Disabilities has the core mandate to undertake awareness-raising activities on issues of disabilities.

Key Recommendations

This report makes the following, among other, recommendations:

- The Ministry of Education, in collaboration with stakeholders, should undertake comprehensive review of the Education Act and enactment of a Special Needs policy to make the right to education exercisable by children with disabilities.
- The FPE programme needs to be re-evaluated to meet the needs of children with disabilities. For these children, FPE goes beyond the provision of desks, books and chalk to include boarding, transportation, health and specialist equipment and aids necessary to educate them effectively.
- The Government should increase resource allocation to schools for children with disabilities to meet the special needs such as hiring support staff and teacher aids as well as provision of necessary equipment. These resources are essential to the education of children with disabilities. Resources such as adequate and trained teachers should be prioritised.
- The concept of inclusive education within the Kenyan education system should be evaluated. Focus should be on educating a child in the least restrictive

environment and in the best interest of the child rather than on the implementation of theories on education, leaving such children open to the danger of being 'guinea-pigs'.

- Mean score ranking should be totally abolished since it is used to deny children with disabilities admission to regular schools.
- The Kenya Institute of Education (KIE) should fast track the development and operationalisation of a specialized curriculum to cover all subjects for children with disabilities. This is because a curriculum is an essential tool for ensuring quality and usefulness of education. Monitoring implementation of this curriculum as well as teaching methods should form a core component of the Ministry of Education's Division of Quality Assurance and Standards.

1.0 INTRODUCTION

1.1 Background of the Study

This study has been prepared by the Kenya National Commission on Human Rights as part of its statutory mandate under the Kenya National Commission on Human Rights Act, 2002, to advise the Government on matters of human rights, including making recommendations for policy and legislative reforms. Section 21(1) of the KNCHR Act mandates the Commission to "submit special reports to the President and to the National Assembly on any matter". The output of this study will be an occasional paper that shall be submitted to Parliament as a special report of the Commission.

The genesis of this study was a number of complaints brought to the National Commission by parents and organisations for children with disabilities alleging violations of the right to education for children with disabilities. In particular, these complaints alleged that:

- Some children with disabilities were denied admission to regular schools;
- Other children had been expelled or otherwise forced out of regular schools, apparently because their disabilities impacted negatively on the academic or extra-curricular competitiveness of those schools; and
- The Government had declined to fund some special schools started by parents of children with disabilities.

Summary of some complaints lodged at the National Commission regarding violation of the right to education for children with disabilities

1. Complaint by a parent against Consolata School, Nairobi

The petition against Consolata School alleged discrimination and a violation of the right to education of a child who is dyslexic. The complainant alleged that Consolata School had asked the parents to transfer their child to another school on the grounds that his performance had not improved to match the expected standards of the school.

2. Complaint by a parent at St. Peter's School, Nairobi

This petition alleged discrimination against children of St. Peter's School. The Ministry of Education had allegedly declined to fund it under the Free Primary Education (FPE) programme. The School argued that even though it was classified as a private assisted school, it deserved public funding because it catered for vulnerable and marginalised members of the society (children with severe mental and physical disabilities) who could not otherwise be admitted into regular public schools. The petition further argued that by virtue of the school being classified as "private assisted" and not as a fully private (profit-making) institution, it qualified for assistance from the Ministry of Education.

Preliminary investigations confirmed that the issues complained of were of a systemic nature; thereby occasioning the need for research to assess policies regarding the right to education for children with disabilities as well as the practices on the ground. This paper documents findings as well as recommendations aimed towards enhancing the right to education for children with disabilities.

1.2 Rationale of the Study

Persons with disabilities have immense difficulties exercising the right to education. This situation exists despite the fact that Government policy documents have over time emphasised the centrality of education as a mechanism for poverty eradication and development.[1] Education is an important facilitator for development, personal growth and poverty eradication, regardless of barriers of any kind, including disability.

Access to education is the most fundamental aspect of the right to education. It is not enough to say that everyone has the right to education without putting in place mechanisms to ensure and facilitate access. Facilitating access to education for persons with disabilities entails the removal of policy, legislative and administrative obstacles and their replacement with positive measures in line with various international human rights instruments providing for or advising equal access to education for persons with disabilities.[2]

Presently, the Government is implementing the FPE programme with the aim of leading the country towards the goal of Education for All (EFA) by 2015.[3] However, this goal may by and large be theoretical in so far as its implementation for children with disabilities is concerned unless effective equalisation of opportunities for their exercise of this right is effected.

The National Commission, being the chief Government agency mandated under the KNCHR Act to ensure promotion and protection of human rights of all people living in Kenya, works through research, advocacy, education, investigations and processing of complaints to implement its mandate. The KNCHR advises the Government and makes recommendations including administrative, policy and legislative reforms towards

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[1] S 7 2 of *the Economic Recovery Strategy for Wealth and Employment Creation, 2003-2007*, reiterates that "education is an important exit route from poverty" It highlights the broad objective of the education sector interventions as being to achieve 100% net primary enrolment rate and reduce disparity in access and quality of education This is similarly reiterated in the *National Poverty Eradication Plan 1999-2015*, that education is critical in improving human capital of low-income groups

[2] See the Universal Declaration for Human Rights, Art 3, the International Covenant for Economic, Social and Cultural Rights, Art 13, the Convention on the Rights of the Child, Art 23, and the Jomtien World Declaration on Education for All (1990), Art 3 (5), see also the Convention against Discrimination in Education, Art 1, the Salamanca Statement and Framework for Action on Special Needs Education (1994), para 2, and the Copenhagen Declaration and Programme of Action (1995) Commitment 6

[3] The call on Education for All was the focus of the World Conference which took place in Jomtien, 1990, leading to the World Declaration on Education for All, (also referred to as the Jomtien Declaration) The Dakar Conference, 2000, reaffirmed the goal of Education for All and set a target date of 2015 Likewise, the MDG on Education focuses on the goal of achieving universal primary education The target of MDG 2 is to ensure that by 2015, children everywhere will be able to complete a full course of primary schooling

enhancing the realisation of human rights by all. The National Commission is interested in ensuring that education is made accessible to all children without discrimination on any grounds including disability. As a national human rights institution, it is within the mandate of the KNCHR to ensure that the Government honours its obligations emanating from human rights instruments that Kenya has ratified. The Government, by virtue of these obligations, ought to put in place policies, laws and mechanisms that ensure implementation of these instruments, including the right to education for all. This study will form the basis for making recommendations for policy, legal and administrative reforms regarding the right to education for children with disabilities.

The National Commission is guided in its work by core values, including the principle of equality and non-discrimination. Persons with disabilities are an often-discriminated key sector of human beings who are in need of special measures to guarantee their rights and freedoms. Moreover, the National Commission has prioritised work around enhancement of the realisation of economic, social and cultural rights including the right to education for all as well as work around the rights of persons with disabilities. This places the study at the core of KNCHR's objectives and priorities.

1.3 Objectives of the Study

The overall objective of the study was to assess the extent to which children with disabilities access the right to education on an equal basis with non-disabled children, and make recommendations towards enhancing effective realisation of the right to education for children with disabilities. Specific objectives of the study were:

- To assess the extent to which policies on education for children with disabilities conform to international human rights standards and norms;
- To assess the extent to which Kenya's process of policy-making and policy-implementation on education takes persons with disabilities into consideration to facilitate their effective exercise of the right to education;
- To assess policy, legislative and administrative gaps which hinder realisation of the right to education for children with disabilities; and
- To examine implementation of the FPE programme and the extent to which it is facilitating the exercise of the right to education for children with disabilities.

1.4 Methodology of the Study

1.4.1 Research team

A research team was constituted within the Research, Policy and Legislation Programme of KNCHR for purposes of undertaking this study. The team comprised:

- Mr. Lawrence Mute – Commissioner, KNCHR;
- Ms. Carolyne Abong – Senior Human Rights Officer, KNCHR;
- Mr. James Mwongera – Human Rights Officer, KNCHR; and
- Mr Ezra Chiloba – Human Rights Officer, KNCHR

The team developed a concept paper for the study, which was reviewed by members of the Research, Policy and Legislation Programme before adoption.

1.4.2 Data collection

An unstructured questionnaire was administered in individual and group interviews with key informants. The information gathered was analysed qualitatively.

In selecting institutions to be visited for the study, a purposive sampling methodology guided by the following reasons was used:

- Identification based on type of disability: The study opted to focus largely, though not exclusively, on institutions providing education for children with intellectual/ mental disabilities since they exemplified the great educational inequalities suffered generally by children with disabilities. Education institutions for children with physical disabilities, hearing impairments and visual impairments were also visited.
- The urban-rural divide: While the study could not focus on the geographical length and breadth of Kenya, it endeavoured to capture the critical geographical divide between rural and urban settings.
- Public versus private divide: The study realised the importance of interrogating opinions in the private as much as the public sector. In the event, however, most private institutions approached for the study declined to offer meaningful information since they had never emphasised the education of children with disabilities.

Individual and group interviews were conducted with key informants in the area of disability and education policy-making.

Table 2: Government Institutions Interviewed

Institution/Department	
1.	Ministry of Education, Special Needs Division
2.	Kenya Institute of Education
3.	Kenya Institute for Special Education
4.	Teachers Service Commission
5.	National Council for Persons with Disabilities (NCPD)
6.	Vihiga District Education Office
7.	Education Assessment Resource Centre, Kisumu

The team undertook a survey of the level and quality of service delivery in the area of education for children with disabilities by visiting and/or speaking to service deliverers in schools (administrators, teachers, etc), parents, pupils and the NGO sector.

Table 3: NGOs Interviewed

Organization	
1.	Kenya Society for the Mentally Handicapped
2.	Kenya Autism Society
3.	Voluntary Services Overseas

The study's respondents under the schools category comprised nineteen institutions.

Table 4: Schools Interviewed

Institution	
1.	Jacaranda Special School for the Mentally Handicapped
2.	Mathare Special School for the Mentally Handicapped
3.	Kilimani Integrated School
4.	Olympic Primary School
5.	City Primary School
6.	Toi Primary School
7.	Lutheran Special School for the Mentally Handicapped
8.	Joyland Special School for the Physically Handicapped
9.	Ebusiratsi Special School for the Mentally Handicapped
10.	St. Ursulas Chamakanga School for the Mentally Handicapped
11.	Kaimosi Special School for the Mentally Handicapped
12.	Khasoko Special School for the Mentally Handicapped
13.	St. Teresa Special School for the Mentally Handicapped
14.	Tumu Tumu School for the Deaf
15.	St. Patrick's Special School for the Mentally Handicapped
16.	Mary Magdalene Special School for the Mentally Handicapped
17.	Joytown Primary School for the Physically Handicapped
18.	Salvation Army Variety Village/ Workshop
19.	St Peters School

1.4.3 Literature review

The study team undertook literature review covering:

- The conceptual context of disability and the right to education;
- Comparative situation in different jurisdictions; and
- Situation (policy, legislative, etc) in Kenya.

1.4.4 Finalisation of report

The study was undertaken from January to June 2006. After being reviewed internally by the National Commission, the report was also reviewed by a reference group meeting that took place on the 15th February 2007.

1.5 Limitations of the Study

The study had to deal with a number of limitations:

- The survey for this research was in part conducted through visits to institutions in Nairobi, Thika, Nyeri, Kisumu, Vihiga, Bungoma and Webuye districts. Due to resource limitations and the short time frame for the study, it was neither feasible nor advisable for the research team to visit all the districts in the country. This factor in itself, however, has not undermined the essence of the study's findings.
- Interviewing pupils with intellectual or mental disabilities was challenging since the team had difficulty explaining concepts such as FPE or inclusive versus

segregated education. The study had on occasion to rely on intermediaries such as teachers for purposes of communication between the researchers and the pupils.

- The Reference Meeting noted that the study overemphasised data from schools for children with mental disabilities at the expense of information from schools for children with other types of disabilities.
- Schools in the private sector distinctly declined to participate in the study
- In overall terms, the research team encountered informative, open and receptive respondents both at the level of schools visited and at the Ministry of Education, including its various departments and district offices.

1.6 Structure of Study

This report is divided into four substantive parts. This first part has provided the context, objectives and methodology of the research. Part 2 establishes the conceptual basis of the right to education for persons with disabilities both from international and national perspectives. That part establishes the human rights principles, which later parts use to adjudge the extent to which children with disabilities exercise their right to education in Kenya. Part 3 outlines the findings of the research while part 4 sets out the recommendations of the study.

2.0 CONCEPTUAL AND NORMATIVE CONTEXT OF THE RIGHT TO EDUCATION FOR PERSONS WITH DISABILITIES

Persons with disabilities are human beings sharing human rights on an equal basis with, and to the same degree as, other human beings. In the words of the Vienna Declaration and Programme of Action:

"The place of disabled persons is everywhere Persons with disabilities should be guaranteed equal opportunity through the elimination of all socially determined barriers which exclude or restrict full participation in society "[4]

The Vienna Declaration further stresses that: "*special attention needs to be paid to ensure non discrimination and equal enjoyment of all human rights and fundamental freedoms by disabled persons*". These special measures entail conscious and deliberate efforts and programmes aimed at identifying and removing those barriers that would otherwise impede effective realisation and enjoyment of human rights by persons with disabilities

This chapter presents the philosophical and normative frameworks which have informed the marginalisation of persons with disabilities; but at the same time which have also been the drivers for pronouncing and raising the visibility of persons with disabilities as subjects rather than objects of human rights It also analyses Kenya's incredibly slow development of thought and action in the realm of education for people with disabilities. The thesis of this study is that children with disabilities in Kenya today remain relatively invisible in their possibility of exercising the right to education.

2.1 Meaning of Disability

Broadly speaking, what disability is and who may or may not be a person with disability are fairly contested matters. This may be so because unlike other social distinctions (such as gender, age or colour), disability has no singularly overarching trait which is obvious in all people who either are placed or claim belonging under that tag.

According to the World Health Organisation's International Classification of Impairments, Disabilities and Handicaps of 1980,[5] disability is a term which, in relation to an individual, describes a functional limitation (for performing tasks, skills and behaviour) which he or she may have arising from physical, intellectual or sensory impairment, medical conditions or mental illness. Such impairments, conditions or illnesses may be permanent or transitory in nature The above definition is founded on the "medical" model of disability.

On its part, the International Convention on the Rights of Persons with Disabilities, after recognising that "disability is an evolving concept and that disability results from the interaction between persons with impairments and attitudinal and environmental barriers

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[4] Para 64 of the Vienna Declaration and Programme of Action adopted by the World Conference on Human Rights of 1993

[5] World Health Organisation (1980) *International Classification of Impairments, Disabilities and Handicaps*, Geneva

that hinders their full and effective participation in society on an equal basis with others",[6] defines persons with disabilities to include "those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others".

Different jurisdictions have qualified this definition to fit country settings and ideologies. In Kenya, the *Persons with Disabilities Act, 2003*, defines disability as:

"a physical, sensory, mental or other impairment, including any visual, hearing, learning or physical incapability, which impacts adversely on social, economic or environmental participation "[7]

All these definitions introduce several elements critical to an understanding of disability:

- Disability arises consequent to impairment of an organ(s) (thereby excluding medical conditions and illnesses except to the extent that such illnesses or conditions impair the functioning of organs). Types of disabilities range widely.
    - Some disabilities are occasioned by impairments to the senses (hearing, sight, etc);
    - Others are occasioned by physical impairments (to hands, legs, etc); and
    - Further, other disabilities are engendered by cognitive impairments covering disorders relating to mental processes of knowing, including awareness, attention, memory perception, reasoning and judgment. Cognitive disabilities include intellectual disabilities, learning difficulties, acquired brain injury, dementia, neurological disorders and autism spectrum disorders.[8]
- The functional limitation, which is an element of the definition of disability under the Persons with Disabilities Act, has to impact adversely on the individual's social, economic or environmental participation relative to non-disabled people. Hence, while disability can result from an illness when disease reduces or nullifies the functionality of an organ, disability per se is chronic rather than temporary, and it is not a curable illness or disease.[9] What defines the presence or absence of disability is the extent to which a particular impairment reduces a person's ability to relate effectively with their everyday environment or surroundings. The everyday environment within which individuals live and act involves social, economic and political interactions.[10]

2.2 From the "Charity" Model to the "Rights" Model

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[6] International Convention on the Rights of Persons with Disabilities, Preambular para (e)

[7] Ibid, Art 1

[8] http //www hreoc gov au/social_justice/cognitive_disabilities doc

[9] Whyte, Susan Reynolds and Ingstad, Benedicte (1995) "Disability and Culture An Overview", in Ingstad, Benedicte and White, Susan Reynolds *Disability and Culture*, University of California Press, 1995, p 3

[10] It is for this reason that HIV-positive individuals cannot be referred to as persons with disabilities so long as their status has not affected their organs such as to reduce their ability to relate effectively with their everyday environment It is notable, therefore, that the Draft Employment Bill, 2004 (prepared by the Task Force to Review Labour Laws appointed by the Attorney General in 2001), defines disability, erroneously, to include "being HIV-positive"

The conceptual basis, findings and recommendations of this study are informed by the historical treatment of persons with disabilities at both the international and national levels.

2.2.1 The "charity" and "medical" models

The initial philosophy, which informed the discourse and practice in the matter of disability, was founded on the inter-linked paradigms of the "charity" model of disability and the "medical" model of disability.

The "charity" model of disability saw persons with disabilities as helpless individuals who required care and protection This model called upon the good-will of society to pity and, therefore, support persons with disabilities. This model was based on charity and benevolence rather than on justice and equality.[11]

Related to the above, was the "medical" or "bio-centric" model of disability that assumed that medical interventions could bring persons with disabilities to a state of "normalcy" similar with non-disabled people. This model sought to understand the biological origin of the disabling condition so as to correct it or prevent it.[12] It applied interventions based on assessment, diagnosis and labelling.

The sum total of these models of disability was their effect of situating the "problem" of disability within the person and thereby "viewing the person as an object for clinical intervention".[13] The perception of disability as a matter for health and welfare led to their isolation, their dependency on the state, their disempowerment, and lack of access to fundamental political, economic and social rights.[14]

Paradoxically, a number of international human rights declarations arose from this premise, for the most emphasising prevention of disability and rehabilitation of disabled persons.[15] In Kenya, missionaries drove initiatives to educate children with disabilities by supporting the establishment of special schools particularly for children with visual impairments, hearing impairments and physical impairments Indeed, it is significant that even the conceptual terms and language employed by the first post-independence Government-commissioned report on education, what is referred to as the *Ominde Report*,[16] were starkly informed by the "charity" and "medical" models of disability. Paragraph 507 of the Report states:

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[11] National Human Rights Commission (India), *Disability Manual 2005*, P 17-18

[12] Ibid

[13] Quinn, Gerard and Degener, Theresia (2002) "The Moral Authority for Change Human Rights Values and the Worldwide Process of Disability Reform", in, Quinn, Gerard and Degeener, Theresia (eds) *Human Rights and Disability The Current Use and Future Potential of United Nations Human Rights Instruments in the Context of Disability*, United Nations

[14] Ibid

[15] An example of this is the 1950 resolution of the Economic and Social Council on Social Rehabilitation of the Physically Handicapped

[16] Republic of Kenya (1964) *Kenya Education Commission Report*, part I, Nairobi, Government Printer

"There are however many children whose handicap is less severe and who are quite able to receive their education and training in normal institutions provided that **some sympathetic consideration is given to their problems** by the teachers concerned In this connection, it is necessary to realise that many disabled persons are apt to suffer from a measure of psychological maladjustment arising out of their handicap This . **does call for understanding treatment** from teachers Teachers should also be given a rudimentary acquaintance with the **possible connection between physical handicap and backwardness** " (emphasis added).

2.2.2 The "human rights" model of disability

This model has threefold focae:

First, it focuses on the inherent dignity of the human being and, subsequent to that and only where necessary, on the person's medical characteristics The practical consideration for policy-makers arising from this perspective is the imperative of focusing on a person's abilities rather than his or her disability.

Second, it places the individual at the centre of all decisions affecting that person. This can be contrasted with formulae where paternalistic know-it-all institutions have determined the livelihoods of persons with disabilities.

Finally, it locates the "problem" of disability upon society rather than inside the person. This third aspect of the "human rights" model of disability roots the "problem" of disability to the absence of action by state and non-state actors for mitigating the difference represented by disability. These institutions have responsibilities for tackling socially created obstacles to ensure full respect of the dignity and equal rights of all persons.[17] For example, these institutions are called upon to ensure

- That buildings are designed in such a way that persons with disabilities may access them, and
- That education activities have resources, the diversity and flexibility necessary to accommodate the distinct needs of children with disabilities

Hence, the "rights" model stresses the truism that all human beings, regardless of their disabilities, have rights that are inalienable. People with disabilities have dignity as human beings and are entitled to all rights on an equal basis with other human beings.

The universal standard at the heart of the "rights" model of disability is the principle of equality. For persons with disabilities, the concept of equality of opportunity is of utmost relevance It requires that "a person's life chances" must not be undermined or negated by factors over which such person has no control over. [18] Thus, colour, gender or, in this case, disability, should not be grounds for allowing inequality of one person against another

[17] Supra note 13

[18] This is as distinct from formal/juridical equality of results

Equality of opportunity amounts to substantive rather than formal equality, and, as Quinn and Degeener note,[19] entails:

- Tackling structural exclusion, for example, in areas such as transport, social amenities or public services and communications;
- Ensuring that persons with disabilities are trained to the very best of their abilities to take up socially responsible and productive roles;
- Tackling instances of discrimination that exclude persons with disabilities from various spheres of everyday life; and
- Tackling deep-seated attitudes towards disability

Finally, the dignity inherent in human beings means that a person's entitlements are not contingent on the utility of his or her potential contribution to society. "The dignity of all persons merits such support irrespective of their 'use value'".

2.3 Development of Normative Standards on the Right to Education for Persons with Disabilities

2.3.1 General human rights standards

The recognition of persons with disabilities as human beings with full and equal rights evolved slowly during the decades proceeding from the 1948 Universal Declaration of Human Rights (UDHR). However, the Declaration itself as well as the 1966 International Bill of Rights (International Covenant on Civil and Political Rights [ICCPR] and the International Covenant on Economic, Social and Cultural Rights [ICESCR]) did not make explicit pronouncements on the rights of persons with disabilities.

The shift from a "caring" to a "rights-based" approach to matters of disability began in the 1970s. The 1971 General Assembly Resolution on Declaration on the Rights of Mentally Retarded Persons noted that such persons enjoy the same rights as all other persons (Article 1). Other relevant declarations are the 1975 Declaration on the Rights of Disabled Persons and the World Programme of Action Concerning Disabled Persons (WPA) adopted by the General Assembly in 1982. This Programme tackled prevention of disability and rehabilitation of persons with disabilities; but, significantly, this resolution also dealt with human rights by discoursing on the equalisation of opportunities for persons with disabilities.

The other landmark resolution of the United Nations referencing the human rights of persons with disabilities was the 1993 United Nations Standard Rules on the Equalisation of Opportunities for Persons with disabilities (SR).[20] These are the Rules that guide the actions of states on matters of equalising the opportunities of persons with disabilities, towards which end the Rules outline the following requisite key steps:

- Preconditions for equal participation,[21]
- Target areas for equal participation;[22]

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[19] Supra note 13

[20] A/RES48/96, 85th Plenary Meeting, 20 December 1993

[21] Awareness-raising, medical care, rehabilitation, and support services (Rules 1-4)

- Implementation measures;[23] and
- Monitoring mechanisms.

Finally, in 2001, the United Nations General Assembly resolved to establish an Ad Hoc Committee to consider proposals for a comprehensive and integral international convention to protect and promote the rights and dignity of persons with disabilities. The ICRPD was adopted by the United Nations General Assembly on the 13th of December 2006; and it confirmed the rights model as the way forward for issues of disability.

2.3.2 Education as a Right for Persons with Disabilities

In line with international human rights norms, all human beings have the right to education.[24] Key content of this right include:

- That basic education shall be free;[25]
- That basic education shall be compulsory;[26]
- That secondary, including technical education, be "generally available";[27]
- That higher education be equally accessible to all on the basis of merit[28] or capacity[29] particularly through the progressive introduction of free education;[30]
- That primary education shall be pursued for persons who have not received or completed that basic education;[31]
- That education should aim to develop the human personality fully[32] as well as enabling all persons "to participate effectively in a free society";[33]
- That parents or guardians have the right to choose the kind of education to be given to their children;[34]
- That states have obligations to ensure progressive,[35] and on the basis of equal opportunity,[36] realisation of the right to education;
- That facilities – including schools, fellowships, teachers and teaching equipment shall be improved on a continuing basis;[37]
- That educational and vocational information and guidance be available and accessible to all children;[38]
- That measures be taken to encourage regular school attendance and reduction of drop-out rates;[39]

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[22] Accessibility, education, employment, income maintenance and social security, family life and personal integrity, culture, recreation and sports, and religion (Rules 5-12).
[23] Information and research, policy-making and planning, legislation, economic policies, coordination of work, organisations of persons with disabilities, personnel training, national monitoring and evaluation of disability programmes in the implementation of the Rules, technical and economic cooperation, and international cooperation (Rules 13-22).
[24] UDHR Art.26; ICESCR Art.13; CRC Art.28, 23; ACHPR Art.17.
[25] Ibid.
[26] Ibid.
[27] UDHR Art .27(1); ICESCR Art.13 (2)(b); CRC Art.28 (b)).
[28] UDHR Art.27(1).
[29] CRC Art.28(c).
[30] ICESCR Art.27 (2)(c).
[31] ICESCR Art.27(2)(D).
[32] UDHR Art.27(2).
[33] ICESCR Art.131).
[34] UDHR Art.27(3); ICESCR Art.27(3).
[35] ICESCR Art.13(2).
[36] CRC Art.28.
[37] ICESCR Art.27(2)(e).
[38] CRC Art.28(1)(d).

- That school discipline should be administered in a manner consistent with a child's human dignity;[40] and
- That the child's best interest shall be of primary concern when any institution or individual takes actions including of an educational nature.[41]

International human rights norms[42] require that the right to education for persons with disabilities be interpreted in the following terms:

- That they should have exercise of the right, including access, to education on an equal basis with their non-disabled peers;
- That the quality of education for persons with disabilities should be equal to that of persons without disabilities while at the same time meeting the special needs of persons with disabilities;
- That persons with disabilities have the right to be educated in the same schools and follow the same curricula as non-disabled people;
- That reasonable accommodation of each individual's requirements is provided;
- That special education should be provided and grounded on the particular needs of each person with a disability and that educational programmes should be adapted to the special needs of the student with disability so that such person's maximum capacity is engaged;
- That teachers trained in the education of children with disabilities are a condition precedent for the effective exercise of the right to education by children with disabilities; and
- That vocational training for persons with disabilities should be given special consideration since it is the bridge between education and employment for them.

2.3.3 Kenya's Obligations on Respecting the Right to Education for Persons with Disabilities

Katarina Tomasevski has observed that the core contents of the right to education to entail:

- Availability;
- Access and non discrimination;
- Acceptability; and
- Adaptability.[43]

Governments are obliged to make education available, accessible, acceptable and adaptable for all children.

As a state party to the ICESCR and CRC, Kenya is obliged:

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[39] CRC Art.28(1)(e).
[40] CRC Art.28(2).
[41] CRC Art.3.
[42] Culminating in ICRPD Art.24.
[43] Tomasevski, Katarina (2003): *Education Denied,* London, Zed Books Ltd, at 51.

"To take steps, individually and through international assistance and cooperation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realisation of the rights recognised in the present Covenant by all appropriate means, including particularly the adoption of legislative measures "[44]

Kenya's obligations respecting the right to education for children with disabilities are exercisable at three levels:[45]

- The obligation to respect the right to education which would, for example, require Kenya to refrain from adopting any measures that would hinder or prevent persons with disabilities from accessing education;
- The obligation to protect which would, for example, require Kenya to ensure that no other actor interferes with the access of education by persons with disabilities; and
- The obligation to fulfil which would, for example, require Kenya to fulfil or provide for the realisation of the right to education for persons with disabilities

[44] ICESCR Art 2 (1)

[45] Committee on Economic, Social and Cultural Rights (1990) *General Comment No 3 on the Nature of State Parties Obligations*, 5th Session, 1990

2.4 Legislative and Policy Framework on the Right to Education for Persons with Disabilities in Kenya

Legislative and policy framework

2.4.1 The Constitution

The Bill of Rights in the Constitution of Kenya makes no specific reference to the right to education for persons with disabilities or indeed other persons. While Section 82, the anti-discrimination clause in the Constitution, outlaws discrimination, categories of groups listed for non-discrimination do not include persons with disabilities[46]. Strictly speaking, therefore, a child with disability may not easily find judicial remedy if he or she was to allege discrimination, for example, by an education institution on the grounds of disability

2.4.2 The Education Act

T*he Education Act*[47], the basic statute governing education, does not make any reference to persons with disabilities. Section 14(2) of the Act specifies that:

"No pupil shall be refused admission to, or excluded from a school on any ground of sex, race or colour or on other reasonable ground"

However, it excludes the express criterion of disability as a ground for non-admission.

2.4.3 The Children's Act

More recent legislation has recognised the right to education of children with disabilities. *The Children's Act, 2001*[48], which domesticates the CRC, reiterates the right to education for all children. This Act emphasises the core principle of non-discrimination in access to education as well as the entitlement to free and compulsory basic education. The Act makes specific reference to disability in Section 12 to the effect that:

"a disabled child shall have the right to be treated with dignity, accorded appropriate education and training free of charge or at a reduced cost whenever possible"

2.4.4 The Persons with Disabilities Act

Section 18 of the *Persons with Disabilities Act*[49] makes a broad statement on the rights of persons with disabilities relating to education. It forbids discrimination of children with disabilities in access to education by virtue of their disability It requires learning institutions to take into consideration the special needs of persons with disabilities with respect to entry requirements, pass marks, curricula, examinations,

[46] See section 82 of the Constitution of Kenya on protection from discrimination Section 82(3) enumerates the prohibited grounds of discrimination as race, tribe, place of origin or residence, political opinions, colour, creed or sex

[47] Republic of Kenya (1980) *The Education Act Chapter 211 of the Laws of Kenya*, Nairobi, Government Printer

[48] Republic of Kenya (2001) *The Children Act*, Nairobi, Government Printer

[49] Republic of Kenya (2003), *The Persons with Disabilities Act*, Nairobi, Government Printer

school facilities and class scheduling, among others. Besides this requirement to learning institutions, the Act provides for the establishment of special schools.

However, the role of the Government in effecting these provisions is unclear. Unlike the Children's Act which provides that education shall be the responsibility of the Government and parents, the Persons with Disabilities Act only requires the NCPD to work in consultation with the relevant agencies of the Government to make provisions for an integrated system of special and non-formal education. This Act does not place an obligation on the Government regarding education for children with disabilities.

The above cited statutes give the impression that Kenyan policy-makers have made the conscious decision to develop disability-specific statutes to cover the variety of concerns which persons with disabilities have. In fact, countries such as South Africa have adopted the contrary position where issues of disability are included in legislation of general application to all people. This second approach has the key advantage of ensuring the non-marginalisation or non-peripheralisation of disability issues. For example, while the Persons with Disabilities Act has overarching functions in the area of disability, its attendant institutions are so under-resourced that the purposes of the Act by and large remain unfulfilled.

2.4.5 The Ominde Report

The *Kenya Education Commission Report* (Ominde Report, 1964)[50] was the first national report that made recommendations on the education sector This report, coming immediately after independence, focused on non-discrimination in education for all children The report recommended the establishment of special schools for children with disabilities. However, no special measures were proposed to enhance education for children with disabilities, given their vulnerability, nor was the Government's role stated clearly.

2.4.6 The Koech Report

Following the initiation of the 8.4.4 system of education, the Government formed the Commission of Inquiry into the Education System of Kenya, also known as the *Koech Commission.* The report of this Commission[51], released in August 1999, contained some findings and recommendations made with specific reference to education for children with disabilities. The Report observed that the goal of education is to provide equal opportunities for all children including those with special needs; hence the formulation of Total Quality Integrated Education (TIQET), which, according to the report, is a comprehensive framework that addresses previously omitted aspects of education including special education.

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[50] Republic of Kenya (1964) *Kenya Education Commission Report. Part I and Part 2,*Nairobi, Government Printer This report was followed by the *Gachathi Report* (1976) and the *Kamunge Report* (1988), which broadly focused on early interventions, identification and assessment of children with special needs

[51] Republic of Kenya (1999) *Totally Integrated Quality Education and Training – Report of the Commission of Inquiry into Education System of Kenya,* Nairobi, Government Printer

The Koech report contained comprehensive findings and recommendations for reform of special needs education. It observed that the rapid growth in the education sector had not been reflected in the special education category; hence children with disabilities had not received equal chances of access to education. This, according to the report, had been further compounded by the lack of specialised personnel, shortage of specialised equipment, inappropriate curricula and the absence of clear policy guidelines as well as clear legal status of special education. Moreover, the Koech Commission found the Education Act to be outdated since it neglected crucial areas of education including for those with special needs, and hence it (Education Act) could not be used as the basis for education policy development, coordination and implementation. Therefore, according to the Koech Report, education for learners with special needs had largely remained at the margins of implementation of public policy on education.

The Koech report recommended a review or re-enactment of the Education Act and the enactment of a Special Education Act as well as the preparation and adoption of a new sessional paper on education to replace the 1988 sessional paper. This report also recommended the development of a specialized curriculum by the KIE.

Many of the recommendation of the Koech Commission have not been implemented, even though they are directed towards enhancing the right to education for children with disabilities.

2.4.7 Task Force on Special Needs Education, 2003

Specifically relating to persons with disabilities, the Government set up in 2003 a Task Force on Special Needs Education whose report[52] was released in November 2003. This task force was formed soon after the Government commenced implementing the programme of FPE, with the recognition that the right to education applies to all children including those with disabilities who had been on the margins of the country's educational system. Broadly, the Task Force was formed to carry out an appraisal exercise on special needs education to enable the Government plan for the provision of education of these learners, taking into account their special needs.

The task force made a number of findings and recommendations towards enhancement of the right to education for persons with disabilities. Like the Koech Report, it observed that there was no policy or legal framework on Special Needs Education in spite of recommendations and policy guidelines given by previous commissions and task forces

A key finding of the Task Force was the fact that limited progress had been made towards the attainment of universal primary education. Primary education, according to the report, had been characterised by low enrolment and drop out rates and, in

[52] Republic of Kenya (2003) *A Report of the Taskforce on Special Needs Education – Appraisal Exercise*, Nairobi, Ministry of Education, Science and Technology

particular, special needs education had been affected badly by this situation Similarly, many children with disabilities who took advantage of the introduction of FPE to join school eventually dropped out due to an unconducive school environment occasioned by the lack of equipment and facilities.

The Task Force also found that there was a lack of statistical data on learners with special needs, a finding that was similarly in the Koech report. Like the Koech commission, the task force recommended a census for all types of disabilities to be carried out. A key observation of this report was that inclusive education required proper planning, which would not be possible without accurate data, resource and legislative support With regards to inclusive education, the report noted that whereas inclusive education was already going on indirectly in various schools, teachers were not clear on how it should be implemented. At the same time, only 20% of teachers had training in special needs education, hence the need for training and in-servicing of teachers. The Task Force recommended that inclusive education be fully embraced as a strategy for expanding access to education and observed that the Government would not be able to provide special education to all children with disabilities unless it implemented inclusive education.

Finally, the Task Force found that besides teachers, physical facilities and learning materials in many schools were not appropriate for children with disabilities, hence the recommendation that all schools be made barrier free to ease accessibility for learners in special needs education and to facilitate inclusive education. The findings of this study will confirm the extent to which some of these findings and recommendations have been taken into consideration in planning for and implementing education of children with disabilities.

2.4.8 Sessional Paper No. 1 of 2005

The Sessional Paper on education (2005)[53] launched by the Ministry of Education in 2005 outlines Government policy on education and training. One of its objectives is the realisation of universal access to basic education and training that ensures equitable access for all children including vulnerable and disadvantaged groups. It affirms education as a human right as well as restating the Government's commitment to provide every Kenyan with basic quality education and training

This paper observes that enrolment in special education programmes is quite low given that over 90% of children with special education needs are not in school, hence the need to put in place programmes and strategies to facilitate their education. To further remedy this state of affairs, the Sessional Paper like the report of the Task Force recommends inclusive education, including the removal of barriers to education for children with disabilities and awareness creation to eradicate negative beliefs associated with disability. In addition to this, it recommends the development of a special needs policy to cater for the learning requirements of children with special needs. It is, however, significant to note that whereas the policy identifies gaps in

[53] Republic of Kenya (2005) *Sessional Paper no 1 of 2005 on Policy Framework for Education, Training and Research*, Nairobi, Government Printer

implementation of education for categories including children with disabilities, it only sets targets with relation to children in arid areas, informal settlements and the girl child, no target has been set for children with disabilities. This implies that it would be difficult to assess the extent to which the policy has facilitated access to education for children with disabilities.

The policy observes that financing of special education still remains a major challenge for the Government – that the Government spends only 0.2% of the total education budget on special education[54]. Since this is clearly inadequate, most financing for special education has to be sought from local and international NGOs and other sponsors. In recognition of this shortcoming, the policy reiterates that given the Government's commitment to EFA by 2015, a framework incorporating financing requirements of special education will be established. It is, however, important to note that the proposed policy to address financing challenges under the FPE programme is not very clear regarding measures to be put in place to address the challenges identified with regards to special education. It only states that the Government will prepare a framework for enhancing the development of special education, with no further elaboration on the matter. Therefore, despite the fact that this Sessional Paper recommends the development of a special needs policy, the fact that very little weight is placed on education for children with disabilities demonstrates the extent to which their issues have been relegated with regards to education.[55]

2.5 Conclusion

From the foregoing, it is clear that even in the absence of cogent legislative framework and policy guidelines, a host of recommendations have been made by the various commissions and taskforces set up by the Government to look into ways of enhancing the provision of education in the country. These recommendations in the main remain unimplemented

Policy and legislation have begun to acknowledge persons with disabilities as human beings with inherent dignity, but this has not translated into tangible and irreversible benefits, for example, in the provision of education. Obviously, it is pointless for the Government to take half-hearted measures to resolve a problem. Even with the implementation of FPE to ensure universal access for all, and with the recognition that education is a basic right for all children, children with disabilities still remain marginalized in their access to basic education. This is a paradox given the Government's recognition of education as a basic right, and of the universal right to education for all children. An important aim of the next pages of this study is to show the issues which the Government of Kenya and other stakeholders must grapple with as a matter of urgency if

[54] Ibid at 49

[55] For further analysis on the policy context of education for persons with disabilities from a human rights perspective, see *Kenya The State of Human Rights Report 2003-2004 Deficits, Critiques and Recommendations*, Kenya National Commission on Human Rights, 2005, p 71-72

the right to education for children with disabilities is to be realized in the foreseeable future.

3.0 KEY FINDINGS OF THE STUDY

3.1 The overall framework of education for children with disabilities

Segregated, integrated and Inclusive education
Education for children with disabilities in Kenya is undertaken within segregated, integrated or inclusive education settings. The bulk of children with disabilities who go to school learn in schools catering for specific categories of disabilities. Schools exclusively for children with visual impairments, hearing impairments, intellectual disabilities and physical disabilities have continued to exist despite pressures from integrated and inclusive education models which are increasingly becoming the norm.

Significantly, only a small percentage of children with disabilities go to school at all in view of scarce resources and limited facilities. The study found that some special schools had long lists of children waiting to enlist. Lutheran School for the Mentally Handicapped in Kisumu, for example, had a waiting list of more than 200 children[56].

Types of disabilities
The study found that traditional demarcations of disabilities, and hence categorisation into schools in terms of physical, visual, hearing and intellectual/mental disabilities is no longer as clear-cut as before. Joy Town School for the Physically Handicapped, which in prior years focused almost exclusively on physical disabilities, now found itself catering for a relatively higher number of children with intellectual disabilities. This bears implications on the method of teaching and educational facilities available in schools for children with disabilities.

Intellectual/ mental disabilities
The study similarly found that children with mental/codnitive ??disabilities were particularly vulnerable in their possibility of acquiring meaningful education. The classification of the disabilities of these children – either as mild, moderate or severe – ultimately determined the type of education relevant for them. Indeed, the study found that Kenya is currently undergoing a redefinition of traditional usages of terminologies In prior years, children with a broad range of impairments were defined as mentally disabled and clustered under one category for purposes of policy-making and policy implementation. The study found greater clarity (particularly driven by parents) to distinguish between different types of cognitive disabilities. A consequence of this was that children with autism spectrum disorder, for example, have now began to be recognised as a distinct group requiring interventions best employed when they are not grouped together with children with **intellectual** disabilities. The Kenya Autism Society particularly fronted an approach which would see the establishment of schools for children with autism independent of schools for children with intellectual disabilities. A special unit at the City Primary School is one such intervention established by parents of children with autism The Kenya Society for the Mentally Handicapped on its part

[56] A waiting list constitutes children with disabilities who are seeking enrolment in a particular school, but have to wait for an opening to arise for admission into that particular school Many children on the waiting list do not undertake any form of education and just stay at home

pointed out the practical difficulties of categorising different sub-groups of children with cognitive disabilities, and instead emphasised the need for more services for all such children based in one institution.

Ultimately, though, the study found that education for children, regardless of their disabilities, made a difference in their lives. In the various schools visited, members of the study team interacted with children with intellectual disabilities in various stages of education/training. Children with disabilities were well able to acquire skills that they would use in life to earn a living or become independent socially.

3.2 Implementation of FPE for children with disabilities

In 2003, the Government commenced implementation of FPE in line with the Jomtien Declaration goal of Education for All (EFA) by 2015. The FPE programme seeks to ensure that all children of school-going age, including children with disabilities, access primary education. One objective of this study was to assess implementation of the programme of FPE and the extent to which it is facilitating the exercise of the right to education, including access, for children with disabilities

The Ministry of Education informed the study that following the implementation of FPE, the Government had directed all schools not to deny admission to any child on the basis of his or her disability The Ministry further indicated that the Government provides funds, including under FPE, to all schools, some of which are clearly earmarked to facilitate learners with disabilities. FPE funds are also provided to special schools for children with disabilities.

The Sessional Paper on Education (2005) observes that despite increased enrolment in primary schools following the introduction of FPE, many challenges remain in primary education regarding issues of access and equity. This study found that measures proposed in the Sessional Paper towards addressing these challenges, including review of curricula, removal of barriers to accessing education by children with disabilities and provision of special grants for special needs education, have not increased access to education for children with disabilities even under FPE. At the same time, FPE has witnessed a dramatic increase in enrolment in public primary schools with many schools having as many as 80 children per class. Such a learning environment is not conducive to educate children with disabilities who require specialised teaching support and/ or individualised attention.

3.3 Resources

Government funding for education of children with disabilities is undertaken within the context of FPE. This study found that apart from a special needs allocation of Ksh. 2,000 per child with disability given to each special school or unit in 2003 and a lump sum of Ksh. 153,660 given to all special schools and special units, FPE funds were allocated equally to all schools based on school enrolments, including schools for children with disabilities. This level of resource allocation is insufficient given the special requirements

of children with disabilities, especially with regards to facilities, equipment and teaching aids.[57] Besides these requirements, children with certain disabilities, for example, cerebral palsy, autism spectrum disorder or physical disabilities needed more resources to cover services like physiotherapy and medicines. Only a few schools visited by the study had these facilities from the Ministry of Health, the rest depending on sponsors and parents. The study found that these additional needs were required by the children regularly even within the context of learning institutions and would be best catered for by the Government as part of efforts to keep these children in school. The resource deficit was covered through sponsorships by donors, fees and in a few instances, allocations from Constituency Development Funds (CDF).

St Ursulas Special School, Chamakanga, transports the students with cerebral palsy and autism spectrum disorder to Mbale General Hospital every fortnight for regular check ups, occupational therapy and medical attention. They undertake this using a van borrowed from the local Catholic Church.
Khasoko Special School had received CDF funds to construct a borehole whereas St. Teresa's Special School had received CDF funds towards completion of a classroom block.

Whereas FPE had enhanced access to education for many children, the same could not be said of children with disabilities. The regular mostly day-school environment disadvantages children with disabilities. The fact that boarding costs are not covered under FPE led many teachers and parents to comment that educating children with disabilities in Kenya was not free since funding from Government under FPE does not facilitate special needs education. In their view, the Government had abdicated its role of providing education for children with disabilities.

From the above, it is obvious that children with disabilities need more resources from the Government beyond what is provided under FPE. This finding was similarly reflected in the report of the Task Force on Special Needs Education to the effect that a child with special needs requires more facilities and services than the paying of teacher's salaries, books and other learning materials. Such extra equipment include: Braille machines, typewriters/ adapted computers, hearing aids, crutches and wheelchairs, vocational equipment, medical, therapeutic and rehabilitation equipment. A standard 8 pupil in Joy Town Primary School who had cerebral palsy told the study that although he could handwrite, his handwriting was very shaky and he required a typewriter so as to write legibly.

On account of their disabilities, the study found that children with disabilities are better placed in boarding schools, particularly in instances where a disability makes it harder for a child to commute to and from school every day. Yet, boarding costs are not catered for under FPE. Many of the schools visited charged between 10,000 and 12,000 shillings boarding fees and the day schools had transportation and feeding costs. These are

[57] The Special Needs Education Report found that a child with disabilities in a day school requires on average Kshs. 17,000 per year to cater for their education. (Ministry of Education, Science and Technology: *Report of the Task Force on Special Needs Education,* November 2003, pg 32).

considerable expenses in a country where more than 50% of the population live below the poverty line. This means that children who cannot afford fees and other charges would be forced to stay at home.

The study was further informed that guidelines from the Ministry of Education on the use of FPE funds are cumbersome for schools teaching children with disabilities given the fact that their needs are peculiar relative to the needs of non-disabled children. While Ministry of Education guidelines require schools to use specified funds to purchase books, teachers for children with disabilities would rather purchase other equipment more relevant to the education of disabled pupils. However, schools in the study indicated that a long bureaucratic procedure had to be followed before funds allocated for conventional equipment such as books and chalk could be realigned to purchase more necessary equipment for educating children with disabilities.

Government funding also goes towards the employment of teachers from the TSC and non-teaching staff However, funding towards hiring of non-teaching staff/ teacher aids was not standardised in all schools, yet these are persons crucial in schools for children with disabilities. The study learnt of a trend where non-teaching staff were provided by the Ministry only after an inspection report following assessment for eligibility of a school. This practice is quite discriminatory, especially in cases where some schools are not visited by the Quality Assurance and Standards Division.

3.4 Non-funding of some schools for children with disabilities

Whereas the Government has pledged FPE for all children, the study found that the Government does not fund some schools catering for children with disabilities. Schools which the Government had declined to fund, in the least by providing them with teachers, were St. Peter's Special School, Nairobi, and a unit of children with autism spectrum disorder based at City Primary School in Nairobi[58]. This study sought to confirm why this should be the case

Many of the special schools visited were initially started by local communities and later taken over by the Government. In the case of St. Peter's Special School, the Government had declined to provide it with support such as teachers, arguing that it was not a public school. City Primary School on the other hand has two special units, one for children with intellectual disabilities and the other for children with autism. Whereas the Government supported the unit for children with intellectual disabilities under the FPE programme, the unit for children with autism was not supported until the end of May 2006. The responsibility of paying for support staff at the Unit had been left exclusively to parents. At the time of conducting research for the study, officials informed the team that the Ministry of Education was still in the process of understanding the particular needs of children with autism spectrum disorder and that only after that would the Government make decisions about supporting units set up for educating such children In

[58] This was the finding at the moment of conducting research for the study The study was, however, informed that the Government had, at the end of May 2006, began paying for support staff of City Primary Autism Integrated Programme

the past, such children had been educated in schools for children with intellectual disabilities, a situation occasioned by a misdiagnosis of that type of disability.

The emergent question, therefore, was the criteria used by the Government in determining which schools or special units for children with disabilities it would support. Representations made by teachers and parents insisted that particularly for children with disabilities, the Government should not differentiate between privately established schools and public sector schools. So long as a school is not being run as a for-profit institution, the Government should provide basic support to such schools A principal reason why parents opted to begin schools or take their children to non-public schools emanated from the reality that public schools are not adequately resourced to take in all pupils with disabilities Furthermore, parents insisted that it was discriminatory for the Government not to fund schools for children with autism spectrum disorder

3.5 Role of sponsors in the provision of special needs education

This research sought to establish the sustainability of education for children with disabilities given that the bulk of their expenditure was funded by donors/ sponsors. FPE funds only catered for learning materials and teaching staff. Resources to support teacher aids, teaching aids, food, rehabilitation and therapy and other facilities came from sponsors In other cases, the resource deficit was supplemented through boarding fees. FPE funds accounted for less than 10% of their budgets, meaning that the resource requirements in special schools outmatched their allocation under FPE.

The role that sponsors played in special schools led many of those interviewed to argue that sponsors are undertaking the Government's obligation of providing special needs education If these sponsors pulled out of the special schools, given the limited Government funding under FPE, these schools would not be able to operate.

3.6 Inclusive education

Sessional Paper No. 1 of 2005 emphasises inclusive education as one of the key strategies for facilitating access to education for children with disabilities. Similarly, the *Task Force on Special Needs Education (2003)* recommended inclusive education as a key strategy for expanding access to education for children with disabilities

Broadly, this study made a number of findings regarding the implementation of inclusive education for children with disabilities in Kenya

First, inclusive education clearly has benefits especially regarding the social integration of children with disabilities, their development and in removing stigmas associated with disability. However, the study found that for inclusive education to yield positive results, a number of steps have to be put in place by the Government and other stakeholders. Indeed, the general view of participants in the study was that the Government had not done enough to facilitate inclusive education, and the effect of this was to leave inclusive education as an impracticable and ill-understood theory. Indeed, the study found that

there was very limited understanding of what inclusive education really entails. One commonly held implication was that inclusive education simply entailed removing children with disabilities from special schools to ordinary schools; when, in fact, inclusive education concerns itself with teaching the disabled child in the environment best suited for learning in view of such child's disability.

Second, the study noted the feeling particularly amongst teachers and school administrators that the theory of inclusive education would not easily work for children with moderate or severe disabilities, if the requirement was that such children should learn in the same classroom with their non-disabled peers.

Third, many teachers told the study that inclusive education as a concept had been embraced at the policy level by the Ministry of Education, but it had not been explained or validated at the implementational level. Teachers, among other stakeholders, had never been consulted; they had just been instructed to abide by the new policy. Concerns were expressed that inclusive education was an experiment borrowed from other parts of the world as part of the bandwagon of terminology which kept changing from one generation to the next. The concern here was the need to protect children from experimentation as guinea-pigs of different models of education particularly since this could cause irreversible educational harm upon the children

For inclusive education to be a viable concept in Kenya, the study found that it would have to surmount a number of challenges.

i. First, regular schools, anyway, lack adequate facilities and teachers trained in special needs education. To encourage children with disabilities to join the local primary school would be foolhardy since that child would neither have appropriate teachers nor equipment. This situation would be compounded respecting certain disabilities such as children with multiple or severe disabilities where the regular classroom would be a totally inappropriate environment for the effective learning of such children. At the same time, teachers in regular schools have as yet not been adequately prepared to embrace inclusive education. This then implies that children with disabilities in regular schools would get insufficient educational services from the Government.

ii. Second, the regular school curriculum is too academic oriented to be suitable for children with some disabilities. The point was raised that many schools were reluctant to admit children with disabilities because it was assumed they would lower the school's mean score in national examinations grading.

iii. Third, the Government programme of inclusive education has not been embraced on the ground by regular schools. The rights of children with disabilities still remain alien in many schools and inclusion is not practiced on the ground Officials at the EARC in Kisumu illustrated this dilemma with the case of a head teacher who initially refused to admit a child with cerebral palsy and seemed not to understand the Government policy of inclusive education At the same time, a

clear policy guideline on how inclusive education is to be implemented was lacking.

iv Fourth, the population of pupils in regular schools since the adoption of FPE is very high such that the individualised attention that children with disabilities require is not possible. It is difficult to comprehend how a teacher with 100 pupils would offer attention to all the pupils as well as getting time to offer special attention to a child with visual impairment or intellectual disability, for example. Teachers contended that children with disabilities, in particular those with intellectual disabilities, require Individualised Educational Programmes (IEPs)[59] and because of this, inclusive education in regular schools could not therefore be effectively applied for this category of learners. Experience showed that even pupils with mild intellectual disabilities who eventually were integrated into regular schools still require a teacher to specially assist them with the demands of learning given such disability.

v Fifth, regular schools are ill equipped to cater for the educational needs of learners with disabilities, for example, where children with disabilities require vocational training as part of their education. The study found that whereas special schools for children with disabilities had inadequate facilities for vocational training, regular schools, including those with special units, lacked these facilities in totality. The question that emerged, therefore, was the extent to which these learners could sufficiently undertake their education in regular schools when vocational training forms an important core of their education.

vi. Finally, there has been inadequate sensitisation on issues of disability and stigma still remains in many schools. A lot more needs to be done to facilitate inclusion of children with disabilities generally including by making these schools barrier-free both in their physical facilities as well as changing the attitudes and stereotypes of students, parents and teachers about children with disabilities. Interestingly, where special units for children with disabilities had been placed within regular schools, teachers manning these units were also given duties in regular classes, and the practice was that teachers dedicated most of their time to regular classes to the detriment of the units for children with disabilities. Correspondingly, however, some teachers in such units sought to encourage their disabled charges to mix with other children for extra-curriculum activities.

3.7 Curricula for special needs education

This finding of the study on curricula for children with disabilities is informed by information gleaned from analysing curricula concerns in the field of children with intellectual disabilities.

[59] Individualised Educational Programmes (IEPs) entail learning that is tailored to meet the needs of each child, as opposed to programming for an entire class

A curriculum is the key document outlining the content of education. Schools catering for children with intellectual disabilities use three kinds of curricula, which contribute to their education These are:

- Academically oriented curriculum (ordinary school curriculum);
- Social curriculum (focusing on skills of daily living); and
- Vocational training curriculum.

From discussions with KIE, service providers such as VSO and schools for children with disabilities, the study found that the process for developing disability-specific curricula had been on-going under the direction of KIE for some time; but that the complete curricula were still not ready. At that moment therefore, there was no uniform curricula applied for teaching children with intellectual disabilities.[60]

The schools visited reported that since they did not have curricula specifically designed for learners with intellectual disabilities, they used **adapted curricula** – entailing the use of the regular school curriculum as adapted to suit the circumstances and needs of the learner. This situation necessarily called for effective interpretation and innovativeness of the teacher who had to be trained very well.

Examinations such as Kenya Certificate of Primary Education were particularly daunting and harrowing for pupils with disabilities who would be examined without due regard for reasonable accommodation measures in view of their disabilities The study found that the Kenya National Examinations Council (KNEC) has not put in place effective measures to ensure that children with disabilities are tested for what is within their knowledge in view of their disabilities For example, there is no cognisance by an examiner that the poor quality of a pupil's handwriting may arise from the fact that he/she is using the mouth or feet to write in view of that disability. Furthermore, where the KNEC has allowed pupils with disabilities additional time in which to write their exams, this time is adjudged similarly across the board instead of it being linked to the extent that each particular disability slowed down the pupil. In essence, extra time allocated by KNEC is not tailored to the needs of the learner

In overall terms, the study found that the regular school curricula were overly examination-oriented as distinct from skill-oriented. At the same time, curricula for social skills education and vocational training were so understated and undervalued by the Government that nationally recognised certificates were not issued to pupils upon qualification. National certificates, it was argued by both teachers and parents, would give value (of credibility and legitimacy) to the education or training in question.

Finally, the study found that the Special Needs Division in KIE has limited office space, staffing and generally funds, making it difficult to achieve its targets in developing specialised curricula for special needs education

3.8 Teaching staff

[60] KIE informed the reference meeting for this study held in February 2007 that curricula on perception skills, communication skills and mathematics skills had been approved as of 2007

The study found that teaching children with disabilities went beyond regular school teaching responsibilities to include social work and childcare Teachers of children with disabilities bear responsibilities over and above their traditional roles as teachers, including vocational training, post-school follow up and they have to be on call 24 hours should their pupils need help. This sort of teaching then depends on the passion and dedication, beyond their training as teachers. During the survey, stories abounded of teachers who after being deployed in a school for disabled children thinking it would be light work almost immediately sought transfers because of the extra demands of the work. At the same time, those trained at the Kenya Institute of Special Education (KISE) mainly used the additional training as a springboard for promotions, with no interest in teaching children with disabilities.

The study found that the only extra allowances teachers in special schools were paid amounted to 10% of the minimum basic salary of the teacher's grade. The study was further reliably informed that these allowances were only given to teachers with training in special needs education, who teach in either special schools or special units. Allowances for teachers in special schools without special education training were withdrawn with effect from 1st July 2006. This study is concerned that The Reference Meeting for the study noted that the effect of this decision was to wrongly penalise teachers with valuable experience working in special schools who happened not to have got formal special education training, and that this was not a proper way of ensuring that children with disabilities had effective exercise of the right to education.

Teachers of special needs education are mainly trained at Kenyatta and Maseno universities, and the KISE. In schools visited by the study, many teachers had either been trained at or were seeking admission to KISE, thereby highlighting the importance of this institution in ensuring quality education to learners with disabilities. However, practice on the ground demonstrated a huge deficit in terms of qualified trained teachers to service special education in view of a number of factors. First, KISE has quite limited facilities and hence cannot accommodate most requests for teacher training in special education The study found that besides regular teacher training in KISE, many teachers especially those in regular schools have no additional training in special needs education. This makes them ill-equipped to provide adequate and quality services to learners with special needs. Second, in order to deal with the huge demand for training, KISE has commenced a programme of distance learning. However, whereas the Government subsidized residential training, distance learning was fully self-sponsored, making training in special education quite costly and beyond the reach of many.

The study also found a deficiency in the teacher-student ratio in classes for children with disabilities The recommended teacher-student ratio is.

- 1 teacher to 6 pupils with intellectual disabilities;[61]
- 1 teacher to 12 hearing impaired pupils;
- 1 teacher to 15 pupils with physical disabilities;

[61] Ministry of Education, Science and Technology Teachers Service Commission (2006) *Report on Teacher Staffing Norms*, at 116, Nairobi

- 1 Teacher to 15 pupils with visual impairments; and
- 1 teacher to 1 pupil with severe or multiple disability.

These ratios take account of the individualised attention that children with disabilities require in learning. As an example, teachers for children with intellectual disabilities use IEPs to develop for each learner their own scheme of work. Where a teacher has 15 learners in a class, this is similar to that teacher having 15 classes since regular school teachers only make one scheme of work per subject per class.

Despite the set ratios, the practice on the ground is totally different. The study found that in many special schools for children with intellectual disabilities, the student-teacher ratio was 1 teacher for more than 15 students and in some schools; the ratio was as high as 1 teacher for more than 20 students. The study could not, therefore, even begin to comprehend how the requisite ratio would be operationalised in regular schools, which since the introduction of FPE have become more populated than ever before with classes having as many as 104 students.[62] In this situation, not only the learners with disabilities but also their teachers are disadvantaged.

3.9 Vocational training and employment for persons with disabilities

The study found that vocational training is of great relevance to the livelihoods of children with disabilities. Here, we illustrate this point with the situation which children with intellectual/cognitive disabilities face. Their system of education is as follows:

- Pre primary;
- Primary 1;
- Primary 2;
- Primary 3;
- Pre-vocational; and
- Vocational.

Primary 3 is the highest academic level in these schools after which some children get integrated in regular schools while those who cannot be integrated proceed to pre-vocational and to vocational classes. It is in the vocational class that these learners are taught skills through which they can earn a living - including weaving, tailoring, carpentry and knitting.

Notably, therefore, these schools have responsibilities over and above the traditional role of teaching. Teachers have to consciously make assessments of each child's abilities for purposes of eventual onward placement either in academic or vocational classes. Virtually all rehabilitation centres faced difficulties raising resources for their upkeep. The Government seemed to make a disadvantageous differentiation in resource allocation against rehabilitation as distinct from traditional education institutions for children with disabilities. Variety Village, a Thika-based rehabilitation centre for children with physical disabilities, does not receive any support from the Government

[62] For example, the study found that Olympic Primary School in Nairobi had 104 students in class one

Furthermore, a question that kept recurring in the study from teachers of children with disabilities regarded the post-vocational life of pupils - what would they do after vocational training? Persons with disabilities tend to be squeezed out of the job market where they have to compete with non-disabled people. As stated in the *Sessional Paper on Education, 2005*, the purpose of education is to enable people to earn a living in future. However, the study encountered the strong feeling that the Government and the society in general has not come to appreciate the skills of persons with disabilities and the fact that they can fit in the job market too. In fact, the study team appreciated the quality of furniture prepared by these students

Whereas education ought to facilitate a means for earning a living - a chance for upward mobility, adequate opportunities are not provided to persons with disabilities. Section 13 of the Persons with Disabilities Act does not obligate the Government to provide employment to persons with disabilities. It states that:

"The (National Council for Persons with Disabilities) shall endeavour to secure the reservation of 5% of all casual, emergency and contractual positions in employment in the public and private sectors for persons with disabilities"

Elsewhere, the study established that where some learners with intellectual disabilities were employed, they lacked necessary social support structures for mitigating their disability. In the absence of appropriate support structures, teachers endeavoured to provide follow up and monitoring services, but due to the fact that they are understaffed in their institutions, and since they are not social workers as such, they are ill-able to provide adequate support. Persons with intellectual disabilities employed after vocational training dropped out of work when requisite support was unavailable. For example, a former student of the Lutheran Special School in Kisumu was employed only for her to resign when her father with who she lived had to go back to a rural village after his retirement; this girl no longer had a home in town from which to go to work since she could not live on her own without support mechanisms and she lost an opportunity to earn a living due to lack of follow up services. More positively, however, was the example from Kaimosi Special School where the head teacher assisted a former student who the school had employed with the necessary guidance to enable him to marry and have a family.

3.10 Quality assurance in the provision of education for children with disabilities

The Ministry of Education requirement is for schools for persons with disabilities, and schools generally, to be regularly inspected by the Quality Assurance and Standards Division to ensure the quality of education However, the study learnt that special schools were not inspected regularly, and that where this was done, the quality assurance officers lacked expertise and did not understand what it is that they were inspecting

Quality assurance officers generally did not understand what special needs education entailed. The EARC in Kisumu reported a case where one officer queried why learners with cognitivedisabilities were being taught how to drink water – remarking that this was a waste of time and that the pupils should be 'taught' useful subjects. The officer did not

understand that education for a child with an intellectual disability entails much more beyond the academic and that learning how to drink water is an activity of daily living that has to be taught. In Tumutumu School for the Deaf, a scenario was described where quality assurance officers avoided inspecting the school, joking, anyway, that the teachers in the school knew what was best and that the officers had so much more work which they understood better. Many inspectors were also not familiar with the conditions of children with disabilities, and in one example, at Ebutsiratsi Special School, an officer fled from the class he was inspecting and opted to complete his report in the staff room after witnessing an epileptic child having a fit. When it comes to integration of children with intellectual disabilities to regular schools, this study found that inspectors are not well versed with the concept. At the Kaimosi Special School, for instance, the study was informed of a case where an inspector was demanding the integration of a 20 year old student with intellectual disabilities into class 8 of a regular school, yet an assessment done found that the student could only fit in class 5 of a regular school.

The situations described here suggested to the study that monitoring the quality of education for children with disabilities is not a high priority in the Ministry of Education. Under these circumstances, issues of monitoring implementation of curricula and even use of facilities and equipment cannot be assured in institutions educating children with disabilities. A pertinent point in this regard is the need for the Quality Assurance and Standards Division to monitor curriculum implementation and the proper utilisation of funds under FPE It is also necessary that it should ensure that teachers trained by KISE use their learning for the benefit of learners with special needs.

3.11 Educational Assessment and Resource Centres

Since the 1980s, the Government has established Educational Assessment and Resource Centres (EARCs) at the district level (with some physical facilities shared by two or more districts). EARCs perform services - including early identification of disability for appropriate intervention, as well as assessment of children with disabilities for referral and placement in appropriate educational programmes EARCs are, therefore, crucial in ensuring appropriate educational intervention for children with disabilities.

These Centres face multiple challenges in performing their tasks effectively. Just as the Task Force on Special Needs Education had found,[63] the study learned of the great demand for EARCs given the number of children with disabilities at home whose parents are unclear about what educational programme to enrol them in. EARCs as currently constituted are not able to cope with this demand due to a number of reasons. First, they lack appropriate assessment tools for identifying and pin-pointing the special needs of each child instead of tagging them with general labels (merely as visually, intellectually, physically or hearing-impaired). An informant at the Kisumu EARC intimated that better assessment tools could be used to identify the degree of disability, for example, the extent of visual impairment or whether an intellectual disability was mild, moderate or severe for appropriate intervention. Second, EARCs are under-resourced, and they have insufficient funding, lack adequate trained personnel or even transport for follow up or to

[63] Supra note 52, at 61-66

enable them undertake interventions outside their establishments at the district headquarters.

3.12 Awareness regarding issues of disability

The study found that there is still limited awareness regarding issues of disability, with stigma still attaching to persons with disabilities. This is despite the fact that the Government has prioritised sensitisation to remove the stigma associated with disability.[64] Teachers recounted instances where they had to literally go to homes to find children locked away by parents who saw no value in educating a child with disability. Many parents viewed such children either as unproductive members of society or as "victims" to be hidden away while their parents sought to fend for their feed and shelter.

Attitudes in many regular schools are also tinged with prejudice against children with disabilities. In Khasoko Special School, the study learnt that a child with mild intellectual??? disability who was integrated in the local primary school was forced to return to the special school because other pupils made fun at her owing to her disability. Children with intellectual disabilities who were integrated into regular schools tended to be much older than their counterparts in regular schools, for example, with an 18 year old learner with intellectual disability being integrated in class 4 where her classmates would be hardly 10 years old. Such a child would often be taunted by her classmates because of her age, and she would regress rather than progress educationally.

[64] The Kenya National Plan of Action African Decade of Persons with Disabilities (1999-2009), launched by the Ministry of Gender, Sports, Culture and Social Services in January 2004, identifies advocacy and awareness-creation as a critical theme with the objective of advocating and raising awareness of disability issues in general Activities in this regard include

- Integrating disability issues in the school curriculum,
- Establishing a national newsletter to share disability concerns, and
- Engaging the media to own disability concerns (p 32)

4.0 RECOMMENDATIONS

A key conclusion of this study is that many children with disabilities are not able to access education despite the Government's ongoing implementation of the programme of Free Primary Education and the statements of intent about its commitment to provide every Kenyan with basic quality education. The Government, and in particular, the Ministry of education, needs to re-evaluate policies, programmes and strategies currently in place to enable better facilitation of education for children with disabilities. Education as a basic human right, with particular emphasis on education for children with disabilities, needs to be moved away from the margins to the core of policy decisions that shape and guide the education sector.

The findings of this study evidence violations of the right to education for children with disabilities, in relation to the human rights principles and standards identified earlier in this report. The Government has not fully honoured its obligations to make education available, accessible and adaptable for children with disabilities. On this basis, the study makes the following recommendations:

4.1 Resources

One of the core contents of the right to education entails that 'basic education shall be free'[65]. This study found that the education of children with disabilities is not free since they have to pay for or learn in the absence of critical educational logistics such as boarding, food, medicine, transport, equipment, etc. Regarding this, the study makes the following recommendations.

4.1 1 The Government should as a matter of priority increase resources / funding for schools educating children with disabilities. Increased funding will enable the hiring of support staff and teacher aids, and provision of equipment and teaching aids, which are requisite components of education for children with disabilities The Task Force on Special Needs Education recommended that the Government should allocate Ksh. 17,000 per year to every child under the special needs education category and Ksh. 32,000 per year to every such child in boarding school [66] Equalising opportunities for children with disabilities calls for this recommendation to be effected expeditiously, and the Ministry of Education should liaise with other ministries (including the Ministry of Finance) to ensure that this happens in the 2008-2009 budget. A formula, based on needs assessment for calculating the extra resources necessary for children with disabilities should be developed and effected by the Ministry The budgetary allocation for special needs education which presently stands at 0.2% should be reviewed upwards initially to 1% and consequently continuously reviewed according to need.

4.1.2 The specific funding earmarked by the Ministry of Education for hiring teacher aids and other support staff like readers and interpreters as well as for the procurement of relevant learning materials and equipment should be disbursed on

[65] Supra note 25
[66] Supra note 52 at 34

terms flexible enough so that schools may employ the staff or purchase the aids best suited to provide quality education for their pupils. The Ministry of Education should during 2007/2008 review the appropriate circulars to ensure that schools do not face inflexible administrative guidelines as they seek to purchase materials for their pupils.

4.1.3 The study recommends that the education of most children with disabilities is better effected in boarding rather than day schools. Owing to their disabilities, and because of resource constraints, children with disabilities are least able to travel to and from school every day. Boarding school for these children is, therefore, a need and not a privilege or a matter of choice, which parents may opt for or against. This is the basis of the study's recommendation that for FPE to be meaningful, the Government must cover boarding costs for children with disabilities.

4.1.4 The Government should financially support the education of children with disabilities from preschool to tertiary education including support to home-based programmes for children who cannot attend school because of their disabilities. FPE on its own cannot resolve the educational inequalities and disadvantages suffered by children with disabilities Local authorities, the Ministry of Education, the Department of Social Services, the Children's Department, the National Council for Persons with Disabilities, the Higher Education Loans Board, among other key institutions, should liaise in 2007-2008 to strategise on how to effect this recommendation.

4.2 Non-funding (by the Government) of some schools for children with disabilities

Non discrimination[67] in access and in the provision of education is a key human rights principle. All children, irrespective of disability, are entitled to FPE on an equal basis with all other children, where FPE means that the cost of basic primary education is the responsibility of the Government, including the provision of teachers, support staff, learning facilities and equipment. The fact that not all schools for children with disabilities are supported by the Government through the provision of teachers, support staff and equipment is discrimination against children with disabilities. The study, therefore, recommends that:

4.2.1 The Government should with immediate effect prepare clear criteria for determining schools for children with disabilities, which it will support in terms of teachers, aids and equipment. In doing this, the Government should be guided by the principle of affirmative action, and as such, the criteria may differ from criteria applicable to schools for non-disabled children. These criteria should, among other things, be informed by the principle that the Government will

[67] Non-discrimination is a key principle in human rights treaties The UNESCO *Convention Against Discrimination in Education* (1960) in Art 4 states that "state parties shall undertake to formulate, develop and apply a national policy that will promote equality of opportunity and of treatment in the matter of education"

support schools so long as such schools offer education to children with disabilities and so long as such schools are not run as for-profit institutions. The Ministry of Education should complete this process and incorporate it into the Sessional Paper on Special Needs Education during 2007-2008.

4.2.2 The Study notes that St. Peter's Special School in Nairobi is in grave danger of shutting down since only 5 out of 25 parents have the wherewithal to pay for their children's education. The study recommends that the Ministry of Education should deploy teachers to that school so that its pupils may continue having an education The Ministry's Permanent Secretary should action this matter in 2007. It is significant that the pupils in this school cannot otherwise be able to receive an education because few public facilities for supporting their disabilities exist.

4.2.3 Finally, specific disability sub-types such as autism spectrum disorder, downs syndrome or multiple disabilities are clearly disabilities whose effective intervention includes schooling specially tailored to those disabilities. The Ministry of Education should begin to fund schools or units established in every district to offer education to pupils with these kinds of disabilities

4.3 Least restrictive environment

The Convention on the Rights of the Child[68] clearly advocates that education, including that of children with disabilities, shall be delivered in a manner that is in the best interest of the child. For this reason:

4.3.1 The Government of Kenya and all other stakeholders should be wary of getting bogged down by terminologies. Terms such as special education, integrated education or inclusive education become fashionable only for a specific period in turn to be replaced by a new one. The study recommends that the basic guiding philosophy for the education of children with disabilities should be drawn from the CRC Policy makers and policy implementers in the field of education should continuously confirm that their actions are in the best interests of the child to receive quality education in the least restrictive environment irrespective of how that education is termed Such education must ensure that a child with disability is educated in an environment where he or she can socialise, an environment which is barrier free and which is well equipped with trained teachers, facilities and equipment.

4.3 2 Using this guidance, the Government should, therefore, focus on resourcing schools with adequate equipment and well-trained teachers. Similarly, the Government should ensure that children with disabilities are not used as guinea-pigs to test theories that are unrealistic in view of the country's resource base. Resources should not be drawn away from special schools so that they may be re-channelled in regular schools since an unintended consequence of this may be to undermine the special schools without necessarily capacitating the regular schools

[68] Supra note 41

as alternative education providers. This philosophical position should be clarified within the policy on Special Needs education.

4.3.3 The advantages of children with disabilities learning with their non-disabled children should be exploited at every available opportunity. The educational environment in all schools must, therefore, aim to make it possible for some children with disabilities to have the option of learning in regular schools. It is in the best interests of each child with a disability that the Ministry of Education should require restructuring of the current educational system with regard to physical facilities in all schools, facilitative equipment, teacher training, teaching methods, curricula and resource allocation This should be undertaken in the medium term, by 2012.

4.3.4 The Provincial Administration should be empowered to monitor and compel parents not to conceal their children at home thus denying them the right to education. This will be a practical formula for enforcing Section 45 of the Persons with Disabilities Act. Any necessary amendment to that Act should be made for that purpose. The National Council for Persons with Disabilities alongside the Kenya Law Reform Commission and the KNCHR should take the lead in reforming that Act as necessary during 2007-2008.

4.3 5 The Government should support parents of children with disabilities in ensuring enforcement of their right to education. This should be done through the provision of boarding facilities and boarding units in selected schools or through visiting teachers to provide home based support.

4.3.6 Mean score ranking has been used as a source of discrimination against children with disabilities. Mean score ranking should be totally abolished to prevent it from being used to deny children with disabilities admission into regular schools.

4.4 Curriculum for Special Needs Education

International human rights standards dictate that the quality of education for persons with disabilities shall be equal to that of persons without disabilities, and should at the same time meet the special needs of persons with disabilities. The curriculum is one of the key instruments that determine the standard and quality of education. But whereas children without disabilities use curricula that undergo periodic reviews, the same is lacking for children with disabilities. Given that all children have equal rights to education, the study recommends that:

4.4.1 KIE should fast-track finalisation and operationalisation of specialised curriculum for teaching children with intellectual disabilities. Preparation of this curriculum has taken rather long, and the process should be finalised in 2007 so that schools may implement it from the 2008 calendar year.

4.4.2 Publishing houses may not be keen on preparing textbooks for use by children with disabilities since such books may not earn much profit. For this reason,

the KIE should prepare texts to be used by teachers so that some form of standardisation and quality assurance in teaching children with disabilities is ensured. Similarly, the Government should encourage other stakeholders to prepare these texts through, for example, tax breaks.

4.4.3 The 30 minutes additional examination time provided by the KNEC to children with disabilities should be reviewed and tailored to the needs of the learner as well as to specific types of disabilities. This is because the severities and types of disabilities vary, hence implying the need to determine the various speeds within which such children should undertake a national examination. Similarly, extra time allocated should be proportional to the general time allocated for each exam. KNEC should make the necessary reviews so that pupils may utilise a new exams format by 2008

4.4.4 Examiners should be conscious of their different audiences even as they set or mark exams in order to make these learner centred. KNEC should enforce guidelines confirming that their exams take account of the peculiarities of disability. Photographs in exams must be replaced by tactile or descriptive text which a pupil with visual impairment may appreciate. Interpretation services should be incorporated into the exams of pupils with hearing impairments Such guidelines should warn exams markers against being prejudiced by the handwriting of children with physical disabilities. KNEC should, therefore, strengthen its capacity for dealing with the needs and challenges of special needs of examining children with disabilities. The study recommends that the KNEC should undertake a comprehensive stakeholder driven survey on the basis of which it will prepare necessary guidelines. These guidelines should be enforced by 2008.

4.4.5 Learners with intellectual and other disabilities who are unable to attain academic or vocational qualification should be issued with nationally standardised certification stating the level of their skills /abilities attained. This certification will enable these otherwise disempowered members of society as they negotiate with society for their livelihoods. KNEC and the Ministry of Education should put this in place by 2008.

4.4.6 The Government should pursue the development of sign language aggressively so as to facilitate learning by people with hearing impairments at all levels. Sign language should become an examinable subject. Relevant actors include KIE and KNEC should be involved in this.

4.5 Teaching staff

Education facilities, including schools, teachers and teaching equipment need to be improved on a continuing basis[69] This is a key requirement for education to be relevant and conducive for the child's development Relevant and appropriate

[69] Supra note 37

teacher training, including availability of qualified teachers, are key in ensuring the usefulness of education to a child. Where teachers are lacking or are not appropriately trained, the right to education is violated. The study therefore recommends that:

4.5.1 The TSC, in liaison with the Ministry of Education, should make it compulsory for all teachers to be trained in the basics of special needs education through training and in-service courses on Special Needs Education This should be operationalised by 2008.

4.5.2 The TSC should put in place a policy and mechanisms to ensure that once teachers are trained in special needs education at KISE or other institution, they must teach special needs education for at least 5 years or otherwise pay the full cost for such training. This guideline should become applicable by 2008.

4.5.3 In the medium term, KISE should be expanded to accommodate more teachers for residential training in special needs education. This is more so since even apart from filling gaps for teachers in traditionally acknowledged disability sectors, more teachers are required to educate disability types newly being recognised in this country as requiring specific educational interventions (such as autism spectrum disorder, downs syndrome and multiple disabilities).

4.5.4 An evaluation of the efficacy and value of KISE's distance learning programme should be undertaken. This recommendation is made in view of concerns raised by some stakeholders that long-distance learning might not be particularly effective to train teachers on issues of disability since this training requires a lot of hands-on experience, which could be gained only in residential training.

4.5.5 The Quality Assurance and Standards Division should on an annual basis give feedback to KISE and other institutions which provide training in special needs education on how teachers are performing after training. This will ensure that teachers are actually teaching special education after training.

4.5.6 The curriculum content on disability in teacher training colleges should be strengthened. This will ensure that children with disabilities in regular schools receive appropriate education. Such reviewed curriculum should be effected from 2009.

4.5.7 The recommended teacher-student ratio in special needs education should be implemented to ensure that children with disabilities are receiving the recommended teacher attention and quality education. This will be achieved through recruitment of more teachers for special needs education [70] The TSC should do this as a matter of urgency during the 2007-2008 The time-line for this recommendation is informed by the fact that TSC employs on a continuing basis

[70] Supra note 61

depending on need, and that quite clearly, a need exists in respect of education for children with disabilities.

4.5.8 The TSC should prepare guidelines for effecting affirmative action measures in terms of the Persons with Disabilities Act. As a public employer, at least 5% of its staff should be persons with disabilities. The Secretary of the TSC's insistence that the TSC does not use affirmative action measures in respect of disability should be a thing of the past. Affirmative action measures should be implemented in the short term.

4.5 9 Furthermore, TSC should employ persons with disabilities who are qualified teachers directly rather than through District Education Boards or Boards of Governors

4.5.10 All head teachers and school administrators should, on a continuing basis, be sensitised on special needs education. Many of them do not understand what special education entails nor what disability is, making it difficult for them to manage education for children with disabilities

4.5.11 The Government should review allowances given to teachers working in special education. These teachers undertake work far beyond their conventional duty as teachers. All teachers who teach special needs education should be given this allowance regardless of whether they have been trained or not; indeed, the study notes that many experienced and dedicated teachers are yet not been trained in special education formally, yet they undertook splendid work.

4.5.12 Extra support provided to teaching staff of children with disabilities should be extended to teacher aids and other non-teaching support staff in boarding and non-boarding institutions

4.6 Pre-Vocational and Vocational Education and Training

Pre-vocational and vocational training is a key componenet of education for persons with disabilities since it facilitates children with disabilities to acquire skills of daily living and is the bridge between education and employment. Since a key objective of education is to facilitate upward mobility and alleviate poverty, vocational training appropriate to age and level of disability should be prioritised by the Ministry of Education as part and parcel of the content of learning for persons with disabilities. The study specifically recommends that·

4.6.1 The Government, through the NCPD and ministries such as of Labour, should implement Section 13 of the Persons with Disabilities Act relating to setting up of a quota for persons with disabilities in employment. The language in this section of the Act is very feeble since it merely requires the Council to "endeavour to secure the reservation of 5% of all casual, emergency and contractual positions in employment in public and private sector for persons with disabilities". This

should be strengthened through amendment. In the meantime, however, policy in this regard should be prepared and implemented in the short term.

4.6.2 The Government should similarly create an enabling environment to encourage private enterprises for persons with disabilities, through, for instance, provision of licenses for small businesses like kiosks or reservation of businesses in certain areas (such as newspaper or soft drink vending in central business areas). The study learnt that the Government, through the Ministry of Gender and Social Services, previously provided assistance to persons with disabilities in establishing their own businesses after vocational training. This has, however, since been discontinued. It is recommended that this Government assistance should be revived through loans and the provision of basic tools to enable persons with disabilities to establish their own businesses. Indeed, the Government should set aside funds that persons with disabilities may borrow as start-up capital for businesses. This recommendation should be actioned in the 2007/2008 budget. In making this recommendation, the study notes that the 2006-2007 budget set a useful precedent by setting aside monies for a National Youth Fund. Sadly, although the Persons with Disabilities Act establishes the structure for a similar fund for persons with disabilities, the Government has since 2003 when the Act was passed not provided resources for this Fund.

4.6.3 Vocational training using obsolete equipment undermines the dignity of young adults with disabilities and should be stopped. Obsolete typewriters and out-dated telephone switchboards are still being used to train persons with disabilities to become typists or telephone operators when those professions have long since become computerised

4.6.4 Children with intellectual disabilities who do not sit academic examinations should be issued with national certificates so that they may have a basis of social, economic and political engagement with society.[71]

4.6.5 Since pupils with physical, hearing and visual impairments have a clear progression in terms of secondary schools, the Government should similarly cater for the post-primary school progression of children with intellectual?? disabilities through the establishment and support of sheltered workshops, similar to Jacaranda School Sheltered Workshop, in every province On completing vocational training, these children would be employed in these sheltered workshops. To ensure their sustainability, the Government should on an affirmative basis, contract these workshops to provide goods such as furniture for use by public institutions A plan for this should be put in place by the Ministry of Gender, Sports, Culture and Social Services in consultation with the National Council for Persons with Disabilities.

4.7 Quality assurance in the provision of special needs education

[71] A similar recommendation was made by the Koech report to the effect that the KNEC provides school leaving certificates to children with mental disabilities who pursue vocational training

The Quality Assurance and Standards Division plays the very crucial role of monitoring and evaluation to ensure that education for all children is relevant and appropriate It is only through regular monitoring that quality education for children with disabilities can be ensured. Therefore:

4.7.1 Quality Assurance officers should be trained in special needs education so that they may be better able to monitor and advise on implementation of special education, including the use of funds.

4.7.2 The Quality Assurance and Standards Division should undertake regular monitoring and follow ups in schools to assess and ensure quality and standards in implementation of special education This should be undertaken through an effective report-back mechanism to relevant authorities.

4.8 Education Assessment and resource Centres

4.8.1 EARCs should be provided with assessment tools that comprehensively identify the special needs of children with disabilities rather than labelling them. A tool that establishes, for example, the degree of visual impairment (rather than labelling a child blind) will identify not only the appropriate educational programme but it will enable such a child to participate in regular school, with appropriate equipment. Similarly, such a tool will enable categorisation of children with intellectual disabilities as mild, moderate or severe for appropriate intervention. This should be done in 2007-2008

4.8.2 The government should establish and equip more EARCs in every district. This should be done in the medium term.

4.83 Adequate, trained and multi-disciplinary teams should be provided in all EARCs.

4.9 Awareness regarding issues of disability

4 9 1 The National Council for Persons with Disabilities should undertake extensive sensitisation campaigns on issues of disabilities across the country through public forums, barazas and the media. This will eventually create the attitudinal changes necessary for sustaining policy and legislative changes.

4.9.2 Related to 4.9.1, above, the Government should adequately resource the National Council for Persons with Disabilities to ensure that it is effectively able to discharge its mandate, including campaigns and awareness creation on the rights of persons with disabilities.

4.10 Other recommendations

4 10 1 The Ministry of Education should undertake a comprehensive review of policies and legislation on education, in particular the Education Act, to make it appropriate to education of children with disabilities.

4 10.2 A Special Needs Policy should be finalised and operationalised as a matter of priority.

4.10.3 The Ministry of Education should undertake wider consultations with all stakeholders in terms of policy formulation and curriculum development for special needs education.

4.10.4 The Education section of the Persons with Disabilities Act, which is quite vague and broad, should be reviewed to provide for stronger enforcement mechanisms of the right to education for persons with disabilities.

4.10.5 In the next national population census, categorised census of persons with disabilities should be conducted to inform planning and resource allocation for that sector, including for the education of children with disabilities.

4.10 6 The Government should immediately sign and ratify the recently adopted International Convention on the Rights of Persons with Disabilities. This would promote better realisation of human rights by persons with disabilities, including the right to education.

4.10 7 The current education system is heavily exam oriented such that a teacher is deemed to have succeeded if a child passes national examinations. However, this should not apply for children with disabilities, whose success is gauged at various other levels beyond academic performance Therefore, for teachers of children with disabilities, their performance should not be gauged on the academic performance of their students alone.

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Annex 1: List of key informants

Institution/ Department	Names of officers	Title
Ministry of Education, Special Needs Division	Mr. Phillip Yator Mr. Musa Wambua Mr. Boniface Lentoimanga	Deputy Director, Ministry of Education, in charge of Special Needs Education SEO, SNE EO, SNE
Kenya Institute of Education	Mr. Peter Ndichu Mburu	Programmes Coordinator
Kenya Institute for Special Education	Mr. Ben. A. Mrima	Deputy Dean
Teachers Service Commission	Mr. Gabriel Lengoboini	Secretary
National Council for Persons with Disabilities	Ms. Cecilia Mbaka	Chief Executive Officer
Vihiga District Education Office	Mr. Liyazi	Deputy DEO
EARC, Kisumu	Mrs. Veronica Rae Mr. Aguyo Silas Omiro Mr. Gordon S. Ogwa	Coordinator Officer Officer
Kenya Society for the Mentally Handicapped	Eddah Maina	Chief Executive
Kenya Autism Society	Felicity Nyambura	Programmes Coordinator
VSO	Wambui Kennedy	Programmes Coordinator
Jacaranda Special School for the Mentally Handicapped	Mrs. Omenda Mr. Edward Macharia	Principal Deputy Principal
Mathare Special School for the Mentally Handicapped	Mrs. Phanice N. Musima Students	Principal 4 students 1 former student employed by the school
Kilimani Integrated School	Mrs. Salome Kariuki Ms. Jane Ramu Ms. Betty Chesire Ms. Elizabeth Khamalla	Head Teacher Deaf-Blind unit teachers
Olympic Primary School	Mrs. R. E. Namulundu	Head Teacher
City Primary School	Mrs. Chelule Mrs. Muturi	Head Teacher Deputy Head Teacher Special Unit Teachers
Toi Primary School	Mrs. Irene Musyoka Ms. Terry	Deputy Head Teacher Special Unit Teacher
Lutheran Special School for the Mentally Handicapped	Mrs. Mary Joyce Ouma Mr. Caleb Oria Juma Mr. Ibrahim Abila	Head Teacher Deputy Head Teacher Teacher
Joyland Special School for the Physically Handicapped	Mr. J. Odhiambo	Head teacher
Ebusiratsi Special School for the Mentally Handicapped	Mr. Wycliffe Opuya Ms. Esther Mutoko Mr. Jebon Aleku Ms. Coletta Wasike Mr. Shadrack Oreko Ms. Pauline Ongalo Ms. Ruth Ong'ayi	Head Teacher Teachers
St. Ursulas Chamakanga for the Mentally Handicapped	Mr. Josephat Karani	Head Teacher
Kaimosi Special School for the Mentally Handicapped	Mrs. Elizabeth Vihenda	Deputy Head Teacher

Khasoko Special School for the Mentally Handicapped	Mr. Simon Wakhumba	Head Teacher
St. Teresa Special School for the Mentally Handicapped	Mr. Wycliffe Wang'ila Mr. Tom Masibo	Head Teacher Deputy Head Teacher
Tumu Tumu School for the Deaf	Mrs. Agnes Ngumi Mr. Richard Irungu Ms. Anne Nduta	Head Teacher Deputy Head Teacher Teacher
St. Patrick's Special School for the Mentally Handicapped	Mrs. Susan Mwangi	Head Teacher
Mary Magdalene Special School for the Mentally Handicapped		Head Teacher
Joytown Primary School for the Physically Handicapped	Mrs. Grace Kobocho	Head Teacher Student
Salvation Army Variety Village/ Workshop	Captain Samuel Opuka	Superintendent of the Institution
St Peters School	Mr. John Ouma Onala	Head Teacher

Annex 2: Research team

1.	Lawrence Mute:	Commissioner
2.	Carole Abong.	Senior Human Rights Officer
3	James Mwenda:	Human Rights Officer
4.	Ezra Chiloba:	Human Rights Officer

Annex 3: Participants in the reference group workshop, 15th February 2007

NAME OF PARTICIPANTS	INSTITUTION REPRESENTED
John Ouma Odhiambo	Joyland Special School for the Physically Handicapped
Elizabeth Vihenda	Kaimosi Special School for the Mentally Handicapped
John Ogolla	Kenya National Association for the Deaf
Felicity N. Ngungu	Autism Society of Kenya
Joseph Njenga	United Disabled Persons of Kenya (UDPK)
Christine M. Ondicho	Kenya Institute of Special Education (KISE)
Milca K. Oirere	Teachers Service Commission (TSC)
Ruth Ndunge	Kenya Union of the Blind
Peter Ndichu	Kenya Institute of Special Education (KISE)
Jean-Claude Adzalla	Deaf Aid
Edward Macharia	Jacaranda Special School for the Mentally Handicapped
Fatuma Dullo	National Council for Persons with Disability
Milca Z. A. Omenda	Jacaranda Special School for the Mentally Handicapped
Thomas Omuga	Ministry of Education
Beth Kahathia	Kenya Institute of Education (KIE)
Njambi Wachiuma	Leonard Cheshire International
Thomas Odhiambo	One Touch Management
Simon Ndubai	FPD
Peter W. Opanyi	Kenya National Association for the Deaf
Geoffrey M. Kinyua	Kenya Society for the Mentally Handicapped
Vitalis Were	Leonard Cheshire International
Lucy Atieno	Interpreter
Dan Amollo	Rapporteur
Dr. Samwel Tororei	Consultant
Lawrence Mute	KNCHR
Carole Abong	KNCHR
James Mwenda	KNCHR
Christine Njeru	KNCHR
Grace Ngabirano	KNCHR