

## **SPECIAL NEEDS EDUCATION: A REVIEW OF LEGAL AND POLICY BASIS AND THEIR IMPLICATIONS IN KENYA**

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### **ABSTRACT**

Disability is a natural occurrence in life. Persons with disabilities constitute 10% of world population that translates to approximately 400 million people (World Bank, 2002). In Kenya, the disabled persons are 3.3 million people of whom 60% are children under 18 years (Ndurumo, 2004). These statistics demonstrate that the population of persons with disabilities constitutes a significant proportion in any country and therefore cannot be ignored. In this study the disabled persons will be referred to as learners with special needs since the disability does not render them incapable whatsoever but implies the need to modify and adjust the education system in order to enable the challenged to profit from learning.

In Kenya since independence there have been legal and policy attempts to address the plight of children with special needs in education as a response and commitment to its people as well as to the various international conventions, protocols and action plans that the country is a signatory.

This paper explores the legal and policy provisions pertaining to the practice of special needs education in Kenya and attempts to identify the gaps that continue to yawn for attention in the quest of satisfying the needs of learners with special needs with respect to the attainment of the Education For All goals by 2015, Millennium Development Goals and Kenya's vision 2030 objectives.

### **Statement of the problem**

How to effectively educate and satisfy the needs of learners with special needs and integrate them in society has been the agenda of international community and national governments for a long time. There have been attempts by the United Nations' agencies that have culminated in the ratification of international conventions, protocols and action plans by world nations with

respect to the provision of effective education to learners with special needs within set timelines. It is noted that some of the set timelines for the achievement of certain critical developments such as Education for All by 2015 and the Millennium Development Goals especially with respect to education seem to be a big challenge.

In view of the critical need for effective education of learners with special needs as well as the provision for equal opportunities for all in society, this study investigates the legal and policy initiatives in Kenya pertaining to the practice of special needs education. The study also attempts to identify the gaps that require redress in the provision of special needs education in Kenya so as to effectively provide for the educational, socio-economic and psychological needs of the learners with special needs in our society.

### **Objectives of the study**

The study was guided by the following objectives as to;

1. Give an overview of the international conventions, protocols and action plans with a view to demonstrate the relevance of special needs education in addressing the needs of the learners with special needs.
2. Review the legal and policy initiatives and their implications for the practice of special needs education in Kenya.
3. Suggest strategies for inclusive and barrier free learning in Kenya.
4. Propose recommendations for the improvement of the practice of special needs education in Kenya.

**Methodology:** The study was a historical critique of literature from policy documents, books, journals, magazines and internet on the practice of special needs education.

**Key words:** special needs education, special education, disability, learning barriers, inclusiveness, equity, legal and policy.

### **INTRODUCTION**

Effective provision of education for learners with special needs has exercised the minds of philosophers, educationists, teachers and psychologists since the history of teaching and learning (Hearty and Alur, 2007). An analysis of the history of education reveals that there have evolved various forms of provision for learners with special needs. Private tuition was one of the oldest forms of provision in which parents of children with special needs hired persons to provide private education to their children in their homes (Kisanji, 1993). This brought the realization that children with special needs could learn and dispelled the myth that they were incapable.

Segregated education was the oldest form of formal provision of education for learners with special needs. In this method, learners with special needs are catered for in segregated set-ups in the community. They may be put in special schools in which they learn with learners who have similar difficulties such as the hearing impaired, visually impaired, physically challenged and mentally handicapped, to mention but a few (Ebersohn,2002).

Mainstreaming/ integrated education was another attempt to provide for the education of learners with special needs. This provision reflects the attempts to place learners with special needs in education in the mainstream regular system. However, the focus was still on disability as the pupils were isolated and placed in special units where specialized support to the learner was offered (Patterson, 2000).

Inclusive education seems to be the preferred form of provision of education of learners with special needs. This form of provision involves the satisfaction of the needs of learners with special needs within the regular school using all available resources where opportunities for them to learn together with others is created as they are prepared for their life and adult responsibilities (Wilshire,1998). This is informed by the fact that there is no 'special world' as implied by 'special schools' where learners with special needs would live in isolation from other able bodied persons. All learners go to the same society upon completion of their studies. Consequently, there is need to socialize and train all learners from the outset on how to effectively conduct the business of living in society without segregation, pity or derogatory connotations where effort is made to have the rest of the society appreciate and accept their deviations as natural aspects of individual differences.

However, it is noted that despite these developments in the provision of special needs education, attempts at inclusive education have not been very successful owing to the deficiency in legal and policy guidelines upon which the education of learners with special needs requires to be founded.

### **HISTORICAL PERSPECTIVES ON POLICY AND LEGAL ISSUES ON SPECIAL NEEDS EDUCATION**

A survey of the legal and policy issues pertaining to special needs education at the international level indicates that the initiatives at improving the education of learners with special needs began in earnest in 1948 (Puri and Abraham,2004). More than a century ago in 1948, the Universal Declaration of Human Rights was adopted by the United Nations General Assembly. In 1975, the same body adopted the Declaration on the rights of the disabled persons.

Emerging out of these international developments have been many important conventions, declarations, protocols and action attention and support to the education of learners with special needs founded on the realization that these learners had been ignored for a long time.

The convention on the Rights of the child 1989 especially article 23, 28 and 29 along with plans, have been ratified, acceded to or accepted by national governments and international and non-governmental organizations (Hearty and Alur, 2007). Through these declarations, the international community brought to bear and called upon national governments to pay keener attention to the education of learners with special needs. Articles 2, 3 and 12 have been ratified by many countries in the world including Kenya which has domesticated them in the Children's Act 2001 (Republic of Kenya, 2004).

The world declaration on Education for All and its framework for action to meet Basic learning needs in 1990, article 3, clause 5 states 'the learning needs of the disabled demand special attention. Steps need to be taken to provide equal access to education to every category of disabled persons as an integral part of the education system (Puri and Abraham, 2004).' The declaration and Framework were accepted with the year 2000 as the target year for national governments and international and non-governmental organizations completion. But today after the deadline is over, the scenario remains disheartening. In fact, the elusive nature of the target necessitated the extension of the deadline to 2015 with the hope of realizing it this time round.

In April 2000, a disturbing fact was brought to light. Ten years after the 'Education for All' declaration and the stated commitments by the world community to achieve the stated goal by the year 2000, more than 113 million children have no access to primary education, 880 million adults are illiterate, gender discrimination continues to permeate education systems (Puri and Abraham, 2004).

The report, however, made no direct mention of the special needs of the disabled. The Dakar Framework for Action of the World Education Forum spells out a new resolve to achieve 'Education for All' by 2015. It is obvious that having missed the first target, national governments and international and non-governmental organizations need get started right away to ensure that they do not miss the next target too.

There are several other such meetings and conventions that have given impetus to the development of special needs education, which include the following:

### **UN CONVENTION ON THE RIGHTS OF THE CHILD 1989**

The UN Convention on the Rights of the Child has been ratified by 177 countries of the world (Hearty and Alur, 2007). There are several general articles in the Convention which lead up to article 23, which is specifically about disabled children. This article states that the child's education shall lead to the fullest possible social integration and individual development. The article further declares that every child shall have the right to enjoy a full and decent life, in conditions which ensure dignity, promote self-reliance and facilitate the child's active participation in the community (Puri and Abraham, 2004).

It is clearly discernible that the article in no uncertain terms excludes all forms of discrimination of learners with special needs and recommends that such learners be availed the opportunity to develop and grow in natural environments like any other child.

### **UN STANDARD RULES 1993**

The UN standard rules on the equalization of opportunity of persons with disabilities 1993 set the international standard for policy making and action pertaining to the disabled people. These standards give a powerful support to the development of inclusive education of learners with special needs (Ministry of Basic Education, 1981).

Specifically, the UN Rule 6 covering education says that states should ensure that the education of disabled people is an integral part of the education system. It recommends for; buildings to be accessible, provision of support services like interpreters, involvement of parents and organizations of disabled people in the education process, a flexible curriculum with modifications and adaptations to suit disabled people and an ongoing teacher training programmes to cater for the needs of the learners with special needs (Puri and Abraham, 2004).

Where ordinary schools cannot make adequate provision to include learners with special needs, Rule 6 calls for 'special school education' as a temporary provision whose aim is to prepare the learners for inclusion in the mainstream education system.

### **UNESCO SALAMANCA STATEMENT 1994**

The world conference on special needs education that yielded the Salamanca statement and Framework of Action on special needs education 1994 focused on the value of inclusive schools for a majority of children with disabilities and spelt out the guidelines for the implementation of such an approach (Stainback and Stainback, 1996).

Representatives of 92 governments and 25 international organizations agreed on the recommendation to adopt the inclusive education approach in the education of learners with

special needs (Hearty and Alur,2007).The statement averred that regular schools practicing inclusive education are the most effective means of combating discriminatory attitudes, creating welcoming communities , building an inclusive society and achieving education for all.

The Salamanca Statement highlighted that for effective inclusive education to be realized such factors as; legislation and policy basis, putting in place appropriate administration, adequate budgetary provision, effective early childhood provision, professional development, parental rights and promotion of research and development on special needs education were critical factors that required to be addressed (Ture, 1994).

### **Special needs education initiatives in Kenya**

Education of persons with disabilities in Kenya dates to 1946 with the establishment of a vocational training for the blind at Thika to cater for the Second World War veterans who were either blinded or impaired in their functioning during the war (Ndurumo.1993). This was followed by the establishment of a school for the mentally retarded in 1948, a school for the deaf in 1958, and a school for the physically impaired in 1968 (Ndurumo, 1993). It is noteworthy that the provision of special education in Kenya was heavily on the shoulders of religious and charitable organizations (Ndurumo, 2006).

Though these organizations have done a fairly good job using the charity model; their manner of provision of special needs education lacked relevance, expert personnel, coordination, standardization of curricula and grounding in legal and policy guidelines which necessitated the government to be called upon to coordinate and provide the necessary supervisory, personnel, expertise in curricula, budgetary support and relevant legal and policy basis in order to make the subsector a dynamic educational enterprise.

It is noteworthy that policy makers, education commissions and working parties in Kenya have consistently recognized the importance of special needs education. Ominde commission (1964) noted that there was need for training teachers in special education. It recommended the need to offer students in regular teacher training institutions short term courses on how to handle children with mild impairments in regular schools. The commission also saw the need for providing rehabilitation services which resulted to the establishment of rehabilitation centers throughout the country. The department of vocational rehabilitation in the ministry of social services was established by a parliamentary sessional paper of 1964 as a result of the recommendations of the Ominde commission.

The major weakness of the outcome of Ominde commission was that the coordination of special needs education was placed on the ministry of social services away from the ministry of education which led to the existence of two parallel education systems one under the

mainstream education ministry catering for a majority of learners and the other one for the disabled. The result was inadequate funding and provision of qualified personnel since the ministry of education only focused on the regular education to the exclusion of special needs education. The social services ministry also lacked capacity and expertise to effectively offer relevant education to the challenged learners.

In 1976, Gachathi National Committee on Educational Objectives delved into the intricacies of special needs education and proffered significant recommendations. The committee saw the need for early identification and placement, integrating learners to regular schools and provision of regular curriculum among other things (Ndurumo, 2004). These recommendations resulted in the establishment of a department of special needs education at the Kenya Institute of Education to develop appropriate curricula, learning materials for learners with special needs while the administration and supervisory sections were established at the ministry of education headquarters (Ministry of Basic education, 1981).

Other developments emanating from Gachathi report (1976) were the establishment of pre-primary classes in special schools, assessment centers and the Kenya Institute of special education which now offers diploma and certificates in special education by residential and distance learning approaches.

Mackay (1981) noted paucity of training teachers in special needs education at university level and recommended that a special needs education programme be established at Kenyatta University. In 1981, the ministry of Basic education, in a draft policy document on special needs education stated that special needs education should not be viewed as an insignificant sector of education but one that has the potential to emerge as a dynamic enterprise just like the general education (Ministry of basic education, 1981).

The Kamunge (1988) and Koech (1999) commissions made significant contributions on management of special needs education, training of teachers, development of appropriate curricula, adapting examinations to suit learners with special needs, and the inclusion of emerging areas such as education of the gifted and talented, those with specific learning difficulties, the communication impaired among others as learners with special needs. This expanded the concept of learners with special needs beyond those who exhibited sensory, physical and health deviations.

Koech (1999) noted that 1000 recommendations from past commissions and working parties had not been implemented due to lack of legal and policy instruments. In response to this, the commission appended to its report a number of draft education bills one of which was the special education bill to address various mechanisms and policy issues to govern the subsector. However, to date, this bill has not been enacted to law.

Arising from these recommendations are the Children's Act (2001) and the Persons with Disabilities Act (2003) which currently address the issues of persons with disabilities. It is noted that these two acts are not sufficient owing to the fact that they are general laws and therefore not very specific to special needs education. There is need to provide a legal framework that is relevant and particular to special needs education.

### **Conclusions and recommendations**

This paper presented an overview of the legal and policy basis of special needs education from the international arena to the Kenyan experience. It has elucidated that the international community and national governments have put in place legal and policy guidelines to govern the provision of special needs education. However, the grand legal frameworks and policies seem to be faced by a myriad of challenges such as inadequate budgetary support, negative attitudes and slow pace of enactment of relevant laws to guide provision of special needs education.

It is appreciated that the provision of special needs education has now been removed from the social services ministry to the mainstream education but efforts at effective inclusive education are yet to be realized. The charity model initially utilized by the religious and nongovernmental organizations coordinated by the ministry of social services has now been replaced by a vibrant professional provision of special needs education under the ambit of ministry of education.

The country still continues with special schools separate from regular institutions yet recommendations hold that special schools ought to be a stepping stone towards eventual placement of such learners in inclusive schools with the necessary support in their preparation for adult responsibilities and citizenship.

There is need to make a follow-up on the recommendation that all teachers require to be equipped with some skills on how to handle learners with special needs during their training in teacher training colleges. The reason for this is to ensure that the movement towards effective inclusive education as opposed to special school provisions is given impetus and emphasis.

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