

THE INTERNATIONAL JOURNAL OF HUMANITIES & SOCIAL STUDIES

The Dynamics of Implementing Participation of Children with Regard to Rights to Education in Kenya

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Abstract:

The Constitution of Kenya 2010 gives the child rights to nationality, protection and provisions both by the State and the parents; and their interest is also to be paramount in all matters concerning them. The objective of the study was to understand the dynamics and challenges of implementing the participation of children with regard to rights to education through an interrogation of the Children's Act of 2001 and the Constitution of Kenya 2010.

This paper is a comprehensive review of the literature that interrogates the subject matter through an analysis of the debates about childhood and children's participation, especially with regard to participation and children's right and also children's participation in education in the light of the two policy documents. It has also looked at the reasons why children should participate in education issues affecting them. It goes ahead to look at children's rights and Constitutional provisions; equity in access to education in Kenya; and attempts Kenya has made with regard to domesticating the International instruments.

The study concludes that although there is good legislation in place to address children's rights and participation in education, there are several challenges to implementing the participation rights of children. It recommends that there is need to respect, protect, promote and fulfil the rights of the children to access education on an equal basis because influences of childhood are usually carried over to adulthood, so lack of participation in childhood will lead to poor democratic culture in adulthood.

Keywords: *Childhood, participation, rights, education, Kenya*

1. Introduction

1.1. Background

Children's participation cuts across all programs and should take place at all levels: in the home, in the community, within organizations, and across government and as a part of international forums. When working directly with children and their families in the community, the input and opportunity for expression and leadership should come from the children who are directly affected – for example, in the home or at an after-school program – in accordance with the decisions that have to be made, the needs and resources available, and the child's developmental age (Steinitz, 2009:1-2).

The right to participation is a fundamental right of the child and requires a clear commitment and effective actions to become a living reality (UNICEF, n.d). Despite this central role of participation in regard to children's rights, the African Charter on the Rights and Welfare of the Child (ACRWC) mentions participation in only two instances: in Article 12 with regard to cultural and artistic life; and Article 13 with regard to participation of mentally or physically disabled children, however, Kaime (2009:131) has brought another aspect of participation, which is 'speaking one's mind'. Kenya passed the Children's Act in 2001 and many activists in Kenya had been hopeful that implementation of the Act could bring a dramatic change in the country's care for its children, which has been marked by a tragic combination of inattention, neglect and abuse (IRIN News, 2002). According to Iskinder (n.d), the Children Act 2001 clearly provides, an outstanding example of child-focused legislation – one that is developed based on the normative framework of children's rights, and that adheres to the guiding principles of focusing policy and programming (where possible) at the community and extended family levels, and focusing on the best interests of the child.

It is disheartening, when a perusal of the Children's Act 2001 brings a glaring silence on the participation of children. However, the National Council for Children's Services (NCCS) has come up with guidelines for children's participation, which includes among other goals: to create space for children to participate meaningfully within the structures of organizations, individuals and other stakeholders. The promulgation of the Constitution of Kenya 2010 brought in a new impetus with its strong emphasis on the Bill of Rights.

1.2. Study Justification

The Constitution of Kenya 2010, under the Bill of Rights gives the child rights to nationality, protection and provisions both by the State and the parents [Art. 53(1)]. Their interest is also to be paramount in all matters concerning them [Art. 53(2)]. It is also the fundamental duty of the State and every organ of the State to observe, respect, promote and fulfil the rights and fundamental freedoms [Art. 21(1)]. The right of the child to participation is relevant to the exercise of all other rights, within the family, the school and the larger community context (UNICEF, n.d.). This study is based on the understanding that facilitating effective participation of children is not a smooth activity as it involves negotiations and trade-off in power relations. UNICEF and GoK (2010) identified the challenge as one of analyzing the extent to which Kenya has kept the obligations inherent in the participation rights in terms of policies, institutional capacities, programmes, fiscal provisioning at appropriate levels in furtherance of the Children Act of 2001 and in compliance with the global standards and norms. It is the foregoing that leads to the overall objective of this study which is:

- To understand the dynamics and challenges of implementing the participation of children with regard to rights to education through an interrogation of the Children's Act of 2001 and the Constitution of Kenya 2010.

To achieve this objective, the study was guided by the following questions:

1. What are the provisions of child participation in education as evident in the Children's Act of 2001 and the Constitution of Kenya 2010?
2. How will the child participate in ensuring that their rights to education are protected?
3. What are the likely challenges in implementing the provisions of the Bill of Rights with regard to rights of the child to participation in education Kenya?

2. Debates about Childhood and Children's Participation

2.1. Participation and Children's Rights

International law recognises the rights to popular participation in decision-making; information and access to justice among other procedural rights [see 1948 Universal Declaration of Human Rights (UDHR)]. Alderson (1999) has pointed out that children's rights are part of a broader human rights framework, while children's rights have also been described as a step in the expansion of human rights (Quennerstedt, 2010:620).

The main idea with regard to participation is that children are already active members of society therefore they should be included in human rights. This is the underpinning of the United Nations Convention on the Rights of the Child (UNCRC) and the other child-specific legislation that we shall talk about. Within this is the discussion about the difference between children being social actors or social agents (see for example, Buckingham, 1994; Mayall, 2000). There is an important difference here that relates to power and to what extent children are heard and can influence. Children as social agents also need power, and recognition of their political, social and economic human rights (see Alderson, 2011:129).

The nature of childhood does necessitate additional consideration in the way principled practice of human rights approaches are applied as they are rooted in principles of participation, empowerment and inclusion (Lansdown, 2005). Grover (2007) emphasises that children's rights are indistinguishable from human rights generally, and that the rights articulated in the UNCRC are the same human rights entitlements that apply to all persons. This position is corroborated by Quennerstedt (2010:630) who argues for a conceptualisation of children's rights in a way that unifies children's rights with human rights generally.

The right to child participation is one of four foundation principles of the UNCRC. Child participation is also built into the ACRWC and many other international conventions, including Namibia's Plan of Action for Orphans and Vulnerable Children (Steinitz, 2009:1).

The Children Act of 2001 is the first Kenyan legislation to establish a uniform definition for 'child.' Under this Act, a child is any boy or girl under the age of 18 years (Kenya, 2012). Participation, involves children, youth or minors as being active in decision-making within their societies, communities, programs and services. The hallmark of participation is the engagement of children in decision-making.

With the growth in the recognition of children's rights there is an increased acknowledgement of children's abilities to speak for themselves (de Ro'iste *et al.*, 2012:88) and the need constantly to redefine and reassert their participation as individuals in their community (Buckingham, 1994). However, it has been asserted that pupils' voices have not been given the same prominence and influence as that afforded to adults' voices (de Ro'iste *et al.*, 2012:89), with images of children's participation mostly explored in regard to child labour activities and many times such presentations are perceived as exploitations (Habashi *et al.*, 2010:279).

Though many children act as moral agents, they note that their moral status and in particular their participation rights are constantly in question. Children's own subordination to adults leads them to adopt whatever tactics they can in order to assert their rights; these tactics include wheedling, lying, demanding, refusing; and these tactics themselves reinforce adult prejudices (Mayall, 2000:256).

2.2. Children's Participation in Education

A prevalent meaning of students' participation in education is understood as an individual endeavour to act out the student's role adequately: to attend classes, to be attentive during classes, to study and do the homework (de Castro, 2012:57-8). It also refers to attitudes and behaviours, such as involvement in school work, commitment to school rules, voicing one's opinion when asked for it and attendance to school events and activities (de Castro, 2012:58). Respecting children by including them in decision-making can help ensure that their influence is positive, rather than negative (Steinitz, 2009:1).

Pupil participation in school is a term used to 'embrace strategies that offer pupils opportunities for active involvement in decision-making within their schools' (Flutter, 2007:344). In line with the UNCRC provision on the best interest of the child (see Piper, 2000; Rudduck & Flutter, 2000), children's participation should first and foremost benefit the child or children who are involved. If others gain from what the child has shared (as they likely will), that is a bonus and only a secondary goal (Steinitz, 2009:3). In most cases, realities that incorporate children's participation, may be contrary to the ideals of participation (Kirby & Woodhead, 2003), especially, when children's participation is in part a response to the community's needs and challenges (Habashi *et al.*, 2010:281). The adults in most cases will circumvent children's participation in the name of protecting the children, invoking the best interest of the child.

Children's participation should always be voluntary, informed, meaningful, respectful and safe. They should be informed about the purpose, risks and possible outcomes of their participation, before they can decide whether or not to participate. Participating children should feel that their contributions are valued and their comments are listened to; and finally, participating children should be safe from physical, psychological or emotional harm (Steinitz, 2009:4). Facilitating advocacy by children, and those that represent them, will be necessary to persuade governments and other agencies to respond to the specific needs of children and to change their attitudes, policies, laws and practices (Crewe, 2007:64). The UNCRC domains of prevention, provision and participation should be recorded in constitutions and/or amendment with equal emphasis, to function as one unit with none overriding the importance or influence of the other (Habashi *et al.*, 2010:283).

2.3. Why Children should Participate in Education Issues Affecting them

According to Lansdown (1994:42), children have been portrayed as 'lacking morality, as being out of control and lacking the experience on which to draw for effective participation'; however, the education system has great potential for listening to students' voices in relation to many aspects of the school system (Lansdown, 2001). Increased democracy in school demonstrated in genuine participation, benefits both the teachers and the students through better relationships and improved learning experiences (de Ro'iste *et al.*, 2012:90).

Children should be involved in the decisions that affect their lives and the future of their community and the larger society in which they live, for three main reasons:

- (i) Children know best the issues that concern them;
- (ii) Taking active roles in making decisions about their own development should be their right.
- (iii) Legal and policy reforms should be influenced by children as they will be affected by the policies and legislation (Crewe, 2007:64).

According to UNICEF and GoK (2010:102), underplaying the participation of children, young people and women would undervalue their contribution to national development, and violate their rights – yet they constitute more than half of the Kenyan population.

2.4. Children's Rights and Constitutional Provisions

Child participation recognizes that children are not a passive, powerless target group but rather capable communicators, who can, and should effectively engage in activities within their communities (UNICEF & GoK, 2010:99). According to Habashi *et al.*, (2010:268), constitutions traditionally express a nation-state's beliefs and forethought of its members. Children's images or lack thereof, in a constitution and its amendments not only reflect the conditions of the time, but also relate the debate regarding general practice, culture, state ideology and extended resources of particular nation-state.

Article 13(1) of the ACRWC entitles children with disabilities to protective measures that *inter alia* ensure their active participation in the Community. While lack of participation hurts the child and national economy, so does inappropriate participation. For example, child participation in economic activities carries consequences for the child's right to development (UNICEF & GoK, 2010:107). Children's images recorded in constitutions are associated, to some extent, in the protection, provision and participation domains as recorded in UNCRC. Hence, this is not always the case that children's images in constitutions are parallel to the three pillars of the UNCRC (Habashi *et al.*, 2010:269).

In 2010, Kenya promulgated a new Constitution which has been hailed as the most participatory in its formulation and enactment but also very ambitious with its provisions on the Bill of Rights. However, Scholars are of the opinion that with the promulgation of the new constitution additional legal reforms are needed. The legal provisions can be used to leverage further action by the government and to increase budgetary allocations to meet international obligations (Amiri & Tostesen, 2011:3). Constitutional provisions for children should acknowledge children as a group with unique potentials and active rights-bearer (Habashi *et al.*, 2010:269-270).

2.5. Children and Access to Education

The Government has rightly prioritized Free Primary Education and the Free Day Secondary Education. Hence education received 70 per cent of the social sector budget allocation, and in 2007-2008 about seven per cent of GDP and 27 per cent of the total Government expenditure and the trend continues to date (UNICEF & GoK, 2010:94).

The first Universal Periodic Review indicates that Kenya has accepted the following key issues with regard to the rights of the child in education: strengthening educational policy to guarantee the required quality of education accessible to all members of its population; developing education policies that ensure quality education, particularly for the poor, marginalized and vulnerable segments of its population; and seeking the support of the international community to formulate policies aimed at further broadening access to free and compulsory education, particularly for children from poor households (Child Rights International Network, 2010).

Equity in access to education has been a major issue in Kenya. Until the recent abolition of school fees in Kenya in 2003, many orphans were kept out of school because they lacked the economic resources to pay the required fees (Iskander, n.d). This inequity results in lower levels of enrolment or completion and in adult life higher rates of illiteracy (UNICEF & GoK, 2010:111). With this inequity in access comes inability for effective participation in educational matters for the concerned children.

According to Iskander (n.d), all programming and policies should be based on a human rights framework, and should be developed in conformity with the rights set out in the UNCRC. In the 2010 progress report on the MDGs, it was noted that the link between disability and marginalisation in education is evident in countries at all levels of development and children with disabilities represent the majority of those who are excluded (African Union, 2012:5).

3. Kenya Situation Report – Promoting Children’s Participation Rights

3.1. Domesticating the International Instruments

Since the introduction of free primary education in Kenya in 2003 the enrolment has shot up. The Gross and Net Enrolment Ratios at the primary level in 2008 was 112 and 82, respectively (World Bank, 2010:107). The quality of education has been questioned, however, as suggested by the teacher/pupil ratios which was 1:50 in public schools in 2008 (KNBS, 2009:22). There are no definitive statistics about the levels of participation of children in the education sector.

By ratifying the CEDAW in 1984 and the CRC on 30 July 1990, Kenya undertook to eliminate all forms of discrimination against women and girls and to promote and respect the inter-connectedness between participation issues and the rights to survival, development and protection (UNICEF & GoK, 2010:99).

The country has gone further and domesticated the same instruments by enacting the Children Act 2001 and participated in the various sessions reporting the progress made in implementing the said instruments. The commitment to the MDGs and the articulation of children issues in Kenya’s Vision 2030 is a demonstration of this obligation (NCCS, 2008:4). However, despite the domestication of the CRC with the passing of the Children’s Act in Kenya, children continue to be subjected to sexual violence, prostitution, trafficking, labour and other forms of violations (Child Rights International Network, 2010).

3.2. The Children’s Act of 2001 in Kenya

This section looks at the child-specific legislation in Kenya and how this addresses or fails to address the issue of child participation. At the core of this is the Children’s Act which came into force on 1 March 2002 as an Act of Parliament to make provision for parental responsibility, fostering, adoption, custody, maintenance, guardianship, care and protection of children; to make provision for the administration of children’s institutions; to give effect to the principles of the UNCRC and the ACRWC and for connected purposes. A key feature of the Act is that each of the entitlements that it enshrines is coupled with an obligation imposed upon parents/guardians, the government, or both. By explicitly tying children’s rights to obligations held by adults, the Act provides a relatively clear system of accountability that should make enforcement of the rights more feasible (Iskander, n.d).

There are elements of institutionalisation of child care in Kenya with legal provisions and corresponding responsibilities (NCCS, 2013). Effective consultation with children would go beyond seeking their views and instead allow them to take an active role in decision-making, recognizing diversity and finding ways to resolve differences (Crewe, 2007:67). Some of the areas where children’s participation is explicit in the Children’s Act of 2001 in Kenya are:

3.2.1. Survival and Best Interests of the Child

Article 4 (4) which provides that in any matters of procedure affecting a child, the child shall be accorded an opportunity to express his opinion, and that opinion shall be taken into account as may be appropriate taking into account the child’s age and the degree of maturity.

3.2.2. Right to Education

Article 7 (1) provides that “Every child shall be entitled to education the provision of which shall be the responsibility of the Government and the parents.” While Section (2) provides that “Every child shall be entitled to free basic education which shall be compulsory in accordance with Article 28 of the UNCRC.”

3.2.3. Right to Religious Education

Article 8 (1) provides that “Every child shall have a right to religious education subject to appropriate parental guidance.” And Section (2) of the same Article provides that “The Minister shall make regulations giving effect to the rights of children from minority communities to give fulfilment to their culture and to practice their own language or religion.”

3.2.4. Leisure and Recreation

Under safeguards for the rights and welfare of the child, Article 17 provides that “A child shall be entitled to leisure, play and participation in cultural and artistic activities.” This at the face value appears binding, but entitlement without effective legal mechanisms for implementation may remain just that, entitlement.

3.2.5. Establishment of Rehabilitation Schools

Article 47 (1) provides that “The Minister may establish such number of rehabilitation schools as he may consider necessary to provide accommodation and facilities for the care and protection of children.” This Section however should be read together with Regulation 12 of the subsidiary legislation on Children’s Charitable Institutions mentioned in section 3.3.7.

3.2.6. Making Custody Order and Joint Maintenance of Children

With regard to principles to be applied in making custody order, Article 83 (1) (d) does provide that in determining whether or not a custody order should be made in favour of the applicant, the court shall have regard to the ascertainable wishes of the child. Here participation of the child is anticipated. However, Article 90 of the Children’s Act provides that “Unless the court otherwise directs, and subject to any financial contribution ordered to be made by any other person, there are presumptions of joint responsibility.” What is anticipated in this article is that a child does not have a say with regard to his/her maintenance and it is the responsibility of the parents or guardians or a legally appointed custodian to maintain the child. Here participation of the child is not anticipated at all, and this is likely to have effects on the child’s educational development.

3.2.7. Education, Leisure Activity and Employment

The Children (Charitable Children’s Institutions) Regulations, 2005, Regulation 12 Section (1) (b) provides that “The administering authority shall promote the educational attainment of children... by ensuring that the routine of the institution is organised so as to further children’s participation in education, including private study.” In exception to this, Regulation 59 (b) provides that “... nothing in this section shall prevent a charitable children’s institution from providing medical care, education or training for children accommodated therein, if the provision of such services has been approved by the Council.”

Finally, it is important to appreciate that while the Children Act of 2001 is not without its faults, “it is a comprehensive, ambitious piece of legislation that incorporates nearly all of the rights enumerated in the CRC and includes detailed terms on the enforcement and provision of those rights. At the very least, the Children Act provides an impressive aspirational framework for the protection of children’s rights” (Iskander, n.d).

3.3. The National Children’s Policy

The National Children’s Policy (NCP) incorporates child participation as an integral component, on its own and as a means to achieving other rights. The overarching goal of the policy is to provide a framework for addressing issues related to children’s rights and welfare in a holistic and focused manner (NCCS, 2008:5). Among the education objectives of the policy are:

- Provision of equitable access to quality and adequate educational facilities;
- Elimination of hidden barriers detrimental to accessing free education;
- Promotion of appropriate and child-friendly physical education (games, sports) and other types of recreational as well as cultural and scientific activities in schools, community centers and other institutions (NCCS, 2008:6).

Due to socio-cultural influences, children are ignored in key decisions that impinge on their welfare hence, the call to underscore their participation as a right. All children shall participate in all areas relevant to their gender and age (NCCS, 2008:12). The UNCRC is built upon four pillars namely: Survival Rights, Protection Rights, Development Rights and Participation Rights. The right to participation is also included in the ACRWC, which is a regional instrument which complements the UNCRC in terms of ensuring that children enjoy rights. This is domesticated in Kenya through the Children Act 2001 (NCCS, n.d.). Children’s participation requires information-sharing and dialogue between children and adults based on mutual respect, which provides space for children to shape both the process and outcome, to ensure inclusive development that is fair and just (UNICEF & GoK, 2010:99).

3.4. The National Council of Children Services (NCCS)

The National Council for Children’s Services (NCCS), is a multi-sectoral body charged with the administration of children’s services in Kenya (Kenya, 2012). Its nature acknowledges the comprehensive scope of children’s rights, recognizing that children’s rights touch not only on the provision of child welfare services, but also on education, health, labour, finance and law (Kenya, 2012).

The NCCS established in 2002 was to supervise and coordinate the planning, financing of child’s rights and welfare activities and to advise the Government on matters thereof. At the institutional level, child participation has been embraced by various children frontline ministries, departments and CSOs through their facilitation of and engagement with child-led movements (UNICEF & GoK, 2010:102). Figure 1 shows some of the treaties to which Kenya is a signatory and also the national laws that touch on the rights of the child to participation.

The UNCRC collectively capture the participation rights of children; from the right to express his or her opinion freely and to have that opinion taken into account in any matter or procedure affecting the child (UNICEF & GoK, 2010:101). Just like the National Children’s Policy (NCCS, 2008), the ACRWC of 1999 highlights the duties and responsibilities unique to childhood in the African context; emphasising the duties and responsibilities accompanying the rights of the child and the obligations on the parents, community and the State (UNICEF & GoK, 2010:101). The NCP highlights that children’s participation must be coupled with duties and responsibilities, which include *inter alia* respect for parents, superiors and elders at all times and preservation and strengthening of the positive cultural values of the community, all these in conformity to the provisions of Section 21 of the Children’s Act on duties and responsibilities of a child (Kenya, 2012)

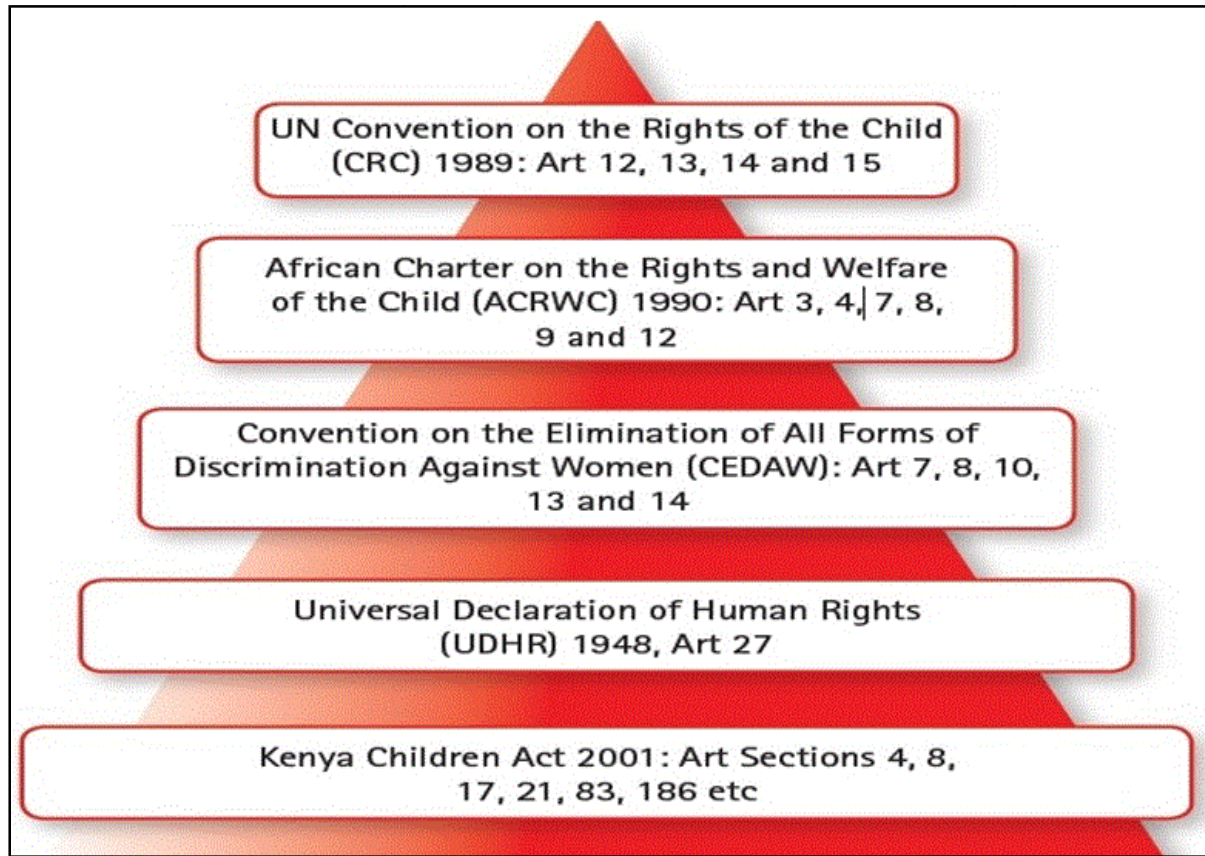


Figure 1 : The right to participation in some treaties and Kenyan national laws

Source: UNICEF & GoK, (2010). 2009 Situation Analysis of Children, Young People and Women in Kenya: Securing Kenya's Future in the Hands of Children and Young People. Nairobi: Government Printer (p.101)

3.5. Constitution of Kenya 2010 and Children's Participation

3.5.1. What are the Constitutional Provisions for Child Participation?

In this Constitution, to a large extent, children's rights have been conflated with general human rights save for only one Article 53, which is specific to Children. All the same, the Constitution is not to be read in isolation as it is the overall framework that guides subsequent legislation with regard to each of the specific actors. This study limits itself to an analysis of the rights of children to participation in education as exemplified in the provisions of the Bill of Rights.

Article 19 (1) of the Constitution, defines the Bill of Rights as an integral part of Kenya's democratic state and is the framework for social, economic and cultural policies. Section (2) outlines the purpose of the Bill of Rights, which states that: "recognising and protecting human rights and fundamental freedoms is to preserve the dignity of individuals and communities and to promote social justice and the realisation of the potential of all human beings." Section (3) (a) affirms that "the rights and fundamental freedoms in the Bill of Rights belong to **each individual** and are not granted by the State.

Article 21 (1) of the Constitution addresses the fundamental duty of the State and every State organ to observe, respect, protect, promote and fulfill the rights and fundamental freedoms in the Bill of Rights. It is however, general in perspective and does not address children's rights in particular. Another general provision is on equality and freedom from discrimination in which Article 27 (1) says that "Every person is equal before the law and has the right to equal protection and equal benefit of the law." Article 27 (4) goes further to state that:

"The State shall not discriminate directly or indirectly against any person on any ground, including race, sex, pregnancy, marital status, health status, ethnic or social origin, colour, age, disability, religion, conscience, belief, culture, dress, language or birth."

The right to freedom of expression has been clothed generally and it is assumed that it includes children's rights to expression. However, this may be limited as parents are generally apt to invoke protection clauses. Article 33 (1) outlines the rights of every person to freedom of expression, which includes, *inter alia* freedom to seek, receive or impart information or ideas. Even though this is provided, children are likely to be denied some information, particularly if the parents feel that such information may not be 'in the best interest of the child' for example information about parentage in cases of children born out of wedlock.

The right to education is what has been specifically addressed as part of the economic and social rights. Article 43 (1) (f) talks of every person has the right to education. This right is further elaborated in Article 53 in which Section 1(b) talks of every child having the right to free and compulsory basic education; and Section (2) emphasizes that a child's best interests are of paramount importance in every matter concerning the child. It is clearly recognized that not all constitutions approve perspectives and the assumption of participation which would interfere with the elements of protection and provision for the children (Habashi *et al.*, 2010: 280), and the Kenyan Constitution is not an exception.

3.5.2. How Children Participate in Education in Kenya

The Ministry of Education is in charge of implementing education policies in the country, and the overall provision of quality education for all children living in the country. Its core roles and functions in child protection include: formulation of policy on primary and secondary education; registration of learning institutions; monitoring quality of programmes; ensuring school attendance; overseeing early childhood education, care and development; and special needs education (NCCS, 2011:16).

It is clearly evident that in the emphasis on protection, participation rights have been shadowed. However, the Ministry of Education is slowly accepting this as an important aspect of good governance in schools and have introduced elements of children participation through:

- Participation in making school regulations;
- Election of student representatives;
- Representation in school management meetings;
- Having a say in the kind of punishments that should be meted on students;
- Student representatives taking part in disciplinary proceedings of fellow students;
- Student involvement when regulations are being developed;
- Involvement of students in staff evaluation exercises;
- Conducting regular student perception surveys on service delivery;
- Participation in organising school events;
- Participation in expressing views in class.

Some of the institutions in Kenya that are striving to promote children's right to participation in line with international commitment and in conformity with the Children's Act, the Constitution of Kenya 2010 and the Vision 2030, include the Government ministries and State agencies; the Civil Society; the private sector; the Faith-Based Organisations; the family and community and the media. The media particularly have contributed significantly to giving children space to express themselves and air their views through programming by children, for children (UNICEF & GoK, 2010:104). These programmes usually have both an educative and entertainment component which not only appeal to the children but also ensure their active participation.

4. Conclusions

This study sought to understand the dynamics and challenges of implementing the participation of children with regard to rights to education through an interrogation of the Children's Act of 2001 and the Constitution of Kenya 2010. After careful analysis, it concludes that there is good legislation in place to address children's rights and participation in education. However, it also does identify areas which may not be easy to implement given the conflicting interests between the adults and the children, and instances where the adults invoke 'protection' and 'children's best interest', to curtail effective participation by the children. Teachers also as guardians of the children in school have specific responsibilities to protect the children and these will in one way or the other stifle effective participation.

There are several challenges to implementing the participation rights of children. Some of these are with regard to stigma associated with child motherhood, disability and poverty. As much as children would wish to determine what they are taught, they cannot participate in determining curriculum. Their choice would only be limited to the subject. Other challenges to participation include shortage of resources in schools, meals at home and appropriate sanitation, as these combined, have an effect on the levels of participation by the children in education, as a healthy body is a healthy mind. There are also children who are the bread-earners and it becomes a challenge realizing their participation in education, whether it be at home or in the factories. These challenges are not effectively addressed by the two pieces of legislation in Kenya, and may require subsidiary legislation or policy framework to effect them.

Children with disabilities in Africa are being denied the right to primary education. They are also more likely to drop out of school and are less likely to achieve positive learning outcomes than their peers without disabilities (African Union, 2012:5). In the Kenyan case, rights of persons with disabilities are addressed, but no appropriate follow-up is done to ensure enforcement, as such the proclamation of rights end on paper, without implementation mechanisms.

It is clearly evident that no consideration has been made for the participation of children in the Council, which is charged with the responsibility of mapping activities affecting the children in Kenya (NCCS, 2011b). Children should be entitled to express their views on matters relating to them, and to have those views respected. Their views should be given due weight in accordance with their age and maturity. This principle is embodied in Article 12(1) of the UNCRC, which holds that:

“States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.”

Schools should come up with innovative means of identifying weak students who should be given special guidance to participate actively in class and outside. There is need to respect, protect, promote and fulfil the rights of the children to access education on an equal basis (African Union, 2012:6). Influences of childhood are usually carried over to adulthood, so lack of participation in childhood will lead to poor democratic culture in adulthood. In the mentioned legislation, the rights of the child in general is given weight, but the right to participation in education is somehow still shallow and may need proper legal framework for implementation, outlining clearly the boundaries for the teachers, parents and the children.

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