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Towards the progressive realisation of children's rights in Kenya



“The Kenyan food crisis
and the right to education”

EDITORIAL

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Welcome to the fourth edition of *Imprint*, the final edition in the first volume of the policy brief. *Imprint* is our quarterly policy brief that aims at exploring various issues surrounding child and human rights. The brief seeks to facilitate intellectual discourse in a bid to promote reform of policy, legislation and practice surrounding child rights in Kenya.

The policy brief works to create the platform for discourse on policies, legislation and emerging issues around children's rights with a particular focus on the current affairs and the state of the Kenyan Child but with a global view on matters facing the children. It contains opinions, findings and recommendations of researchers and practitioners working with children in towards rights and development.

The fourth edition of the policy brief brings to light the impact on the current food crisis in Kenya on the right to education, a fundamental human right.

The cost of food has been steadily rising over the recent years, drastically increasing in the year 2008. The situation has not improved in 2009. According to figures released by the Kenya National Bureau of Statistics the food and non-alcoholic drinks consumer price index increased to 438.17 in January from 415.76 in December due to major increase in seasonal foodstuffs mainly in Nairobi's lower income bracket. The poor particularly in the urban areas are the hardest hit. This has invariably had an effect on the right to education. In Kenya free primary education was established in the year 2003.

Knowing that abolishing school fees alone was not

enough to achieve the goal of nationwide access to primary education, the school feeding programmes was established. This was financed by parents with international donors intervening in the arid and semi arid areas of the country.

The increasing food prices and the prevailing economic crisis have affected the parents, the governments and the donors' ability to adequately sustain the school feeding programme. At the same time the fees at the nursery, high school and college level have been increasing. The Kenya Bureau of Statistics states that the education and recreation index increased by 2.9 per cent due to increase in fees between December 2008 and January 2009. How does the food crisis affect the right to education and what is the government doing about it keeping in mind Article 11 (3d) of the African Charter on the Rights and Welfare of the Child (ACRWC) which urges state parties to undertake to reduce school dropout rates and encourage regular attendance at school. This is the subject matter of this issue of *Imprint*.

The editors wish to acknowledge the various contributors and in particular to the Principals of our partner schools, Kamukunji and Nile Road Secondary Schools in Nairobi who spared time for our interviews and gave incisive analyses into the food crisis and its impact on the right to education. We hope these insights will go a long way to improve the access to quality education for children in Kenya.

Introduction - Education as a human right

Is education a human right? A human right is defined as a right that accrues upon a person by virtue of being a human being. Human rights are characterised by their universality, indivisibility and interrelation; aspects that are integral to the right to education. Universality means that this right applies globally which can be discerned from its emphasis in both international and regional legal instruments.

The right to education is not only a fundamental human right but is also a means by which other human rights are achieved. A general right to education is found under Article 26 of the Universal Declaration for Human Rights and was later reiterated in Article 13 of the International Covenant on Economic, Social & Cultural Rights (ICESCR) and Article 28 of the UN Convention on the Rights of the Child (UNCRC). The right to education is also recognised in regional instruments including the African Charter on the Rights and Welfare of the Child (ACRWC) which provides for free & compulsory primary education. The African Charter on Human & Peoples' Rights simply provides in Article 17(1) that, "every individual shall have the right to education". In Kenya Section 7 of the Children Act provides for the right to education the provision of which shall be the responsibility of the Government and the parents. This right is however not reiterated in the Kenyan constitution which makes no provision for economic, social and cultural rights.

The right to education is categorised as an economic, social and cultural right, a category that has unfortunately not been given the priority it deserves by many developing countries as opposed to political and civil rights such as the freedom of expression and association. Many have argued, correctly in my opinion, that such civil and political rights such as the freedom of expression would be meaningless when people cannot read or write. In addition education not only promotes civil and political rights but also other economic, social and cultural rights such as the right to adequate health care by ensuring existence of qualified medical personnel.

Article 2(1) of the ICESCR obligates each State party to progressively take the necessary steps merely to the maximum of its available resources. However, the Committee on Economic, Social and Cultural Rights has held that even the scarcity of resources does not relieve the State from the immediate duty to ensure a minimum essential level of the right to education to all. Article 13 of ICESCR creates a minimum core obligation on the States by providing that they have an immediate obligation to ensure access to free and compulsory primary education for all. In its concluding observations on Kenya the Committee also provides that the obligation to provide compulsory and free primary education applies in all situations, "including those in which local communities are unable to furnish buildings, or individuals are unable to afford

costs associated with attendance at school." (UN Doc E/C.12/1993/6, para 18.)

The objectives of the right to education can be found in Article 29 (1) of the UNCRC as follows a) to enable a human being to freely develop his or her personality and dignity, b) to enable a human being to actively participate in a free society in the spirit of mutual tolerance and respect for other civilisations, cultures and religions; c) to develop respect for one's parents, the national values for one's country and the natural environment; and d) to develop respect for human rights, fundamental freedoms and maintenance of peace.

At the universal level the implementation of this right is monitored by treaty bodies such as the Committee on Economic, Social and Cultural Rights and the Committee for the Rights of the Child which both receive periodic reports by the state parties. Kenya submitted her first report in 1998 and the second report in September 2005. In the African context the monitoring organ is the African Commission on Human & People's Rights which has in the past taken up cases of economic, social and cultural rights.

The right to education as provided for on legal instruments international, regional and national has two distinctive features, that it shall be compulsory and that it is available free to all. This means that the child shall have the right to receive education beyond a certain level and the government shall have the duty not to refuse the child this right. International instruments do not define the specified level for or length of compulsory free education and this is left to the discretion of the State.

However, saying that children of a certain age have to go to school does not matter if the Government does not put in place policies and mechanisms to ensure availability, accessibility, acceptability and adaptability of basic education. Unhindered access to education depends on it being free and without discrimination to anyone giving special focus to disadvantaged children coming from all backgrounds of society and across the spectrum of the economic divide.

Factors affecting the attainment of the right to education – Joan Kariuki

Poverty, simply defined as the lack of essentials needed to survive, is widely acknowledged to be a critical obstacle in the attainment of the right to education. Neither parents nor governments can ensure education for all children if it is beyond their means. This is why Article 2 (1) of International Covenant on Economic, Social & Cultural Rights (ICESCR) obligates States parties to progressively take the necessary steps to the maximum of its available resources. International co-operation is also encouraged to ensure that a particular State can meet its obligation as far as promoting and protecting the right to education is concerned.

The existence and non existence of school fees and the amount at which these fees has been set influences the number of children from poor families that have access to education. There are a number of issues concerning the elimination of school fees that a State party must address. Firstly in many cases the state eliminates 'tuition costs' without specifying what exactly this comprises of. This leaves schools with the option to charge fees in other forms such as continuous assessment tests fees. Other times a State will make a declaration eliminating fees but fails to provide funding for education forcing the schools into a corner where they have to obtain funds from the

¹ Concluding observations on Kenya, Committee on Economic, Social and Cultural Rights, UN Doc.E/C. 12/1993/6, para 18.

Over the last 20 years the government of Kenya has been undertaking various steps at the policy and the implementation level to guarantee the right of every child to compulsory and free primary education. The move towards free primary education began in 1971. A Presidential decree abolished fees for districts where the geographic conditions were unfavourable to school attendance. In the 1970's tuition fees were abolished gradually from standards 5-7. Since then the country's expenditure on education has been growing steadily culminating in the establishment of free primary education in 2003. On the first week of establishment of the programme more than 1.3 million children enrolled in school for the very first time. This increased the national primary school enrolment ratio from 5.9 million to 7.2 million pupils.

But even with the enforcement of free primary education it was clear that the programme would not be effective as long as children of school going age were involved in seeking their daily meal, prioritising this above their need to learn. This necessitated the enforcement of the national school feeding programme that acted as an incentive. In the marginalised areas, the food provided was the only meal that the children had for the day.

So what is the state of the right to education in present day Kenya? The price of staple foods has been soaring since the year 2000 and rose sharply in the last 20 months up to January 2009.

According to the World Bank over the last three years, global commodity prices have increased by 83%. In Kenya the situation was made worse by the post election violence that mostly affected the agricultural areas, the bread baskets of the country. How does the food crisis affect the right to education and what is the government doing about it keeping in mind Article 11 (3d) of the ACRWC which urges state parties to undertake to reduce school dropout rates and encourage regular attendance at school?

students in a concealed form. Unfortunately many schools in Africa and Asia still charge school fees. According to the report submitted by the Special Rapporteur on the right to education, these countries claim Structural Adjustment Programmes, fiscal austerity & economic recession as the reason they are unable not unwilling to stop charging fees (UN Doc E/CN.4/2004/45)

The second challenge concerns the lack of recognition of education as a human right. In most vocabulary concerning education, the right to education has been replaced with the term access to education. Access to education is indeed an important element of the right to education but if education is not viewed as a human right there is a risk of it getting second class status in a State's priority list leading to a situation where access to education is only guaranteed to those who can afford to pay school fees.

The Committee on Economic, Social & Cultural Rights defined access to education to mean that education shall be free and without discrimination to anyone especially the most vulnerable groups (UN Doc E/1991/23). Use of the word access ignores the other three important elements of the right to education namely availability which implies that educational institutions and programmes shall be

functional and provided in sufficient quantity. The other two are acceptability and adaptability which are inter-related and mean that the form and substance of education, including curricula, teaching methods and school fees, shall be of good quality, flexible, adaptable and of direct relevance to the present and future needs of the children in their social and cultural setting. These three elements are important in ensuring the right to education is holistically met.

The third challenge results from the failure of international human rights instruments to stipulate exactly what constitutes basic education, leaving this essential angle to the discretion of the State. This has allowed nation States to limit the right to compulsory education simply to the primary school level. According to the Committee on Economic, Social and Cultural rights States must prioritise the provision of free primary education but they also have an obligation to make concrete steps towards achieving free secondary and higher education. Secondary education must be distributed throughout the country in such a way that it is available on the same basis for all.

Another obstacle is HIV/ AIDS which affects school attendance in two ways: through death of the students from HIV/AIDS related complications and; dropouts when some students are left orphans by the pandemic and have to take care of their siblings.

Other factors are unique to developing countries. These include reproductive health related causes such as forced or early marriages, unplanned pregnancy, female genital mutilation and sanitary needs where girls miss classes due to lack of sanitary towels.

Food & Education: The Connection – Purity Kiguatha, Youth Alive! Kenya

Sustainable food security is a key component to reaching the social, economic and human development objectives. The human right to adequate food is embedded in several international conventions and human rights treaties. The Universal Declaration of Human Rights Article 25 paragraph 1 states that

“Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services...”

This means that food contributes highly to the standard of living as well as health and the general well being of an individual. Education too is a human right, the Universal Declaration of Human Rights Article 26 paragraph 1 says

“Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages...”

Education opens the learner to new ways of doing things and gives them skills to handle everyday challenges. In the modern world especially in developing countries, where a college education is almost always mandatory to enable access to the job market, the level of education contributes to the standards of living of an individual.

Unfortunately the right to food and to education is not always met. Access to food can be hindered by several factors. A poor harvest due to inconsistency in weather patterns can reduce the supply of food. With the low supply and high demand, food prices rise. Poverty also

Some factors have to do with the family setting from which a child is raised. Some parents are uninformed about the benefits of education thus will not educate their children especially the girl child. These are often sent to their relatives in the cities to earn money as house-helpers or stay at home doing various house chores. Polygamy also affects some parents' ability to support the many wives and children. The strain on finances means that the children's education is sacrificed.

A study by USAID found that a large number of children also dropped out of school due to school related causes for example if the school is located far from their homes such that they have to walk great distance to get there. Another factor is the existence of corporal punishment in schools. Although this has been officially banned in schools, facts on the ground show that this practice is still prevalent. Some students will skip schools to avoid the daily beatings. Other factors are drug taking, negative peer influence and lack of discipline all which are interrelated.

Last but not least is the issue of political interference. In Africa many young people get pulled into the political conflicts in the country. The injustices in society create discontentment among school going youth and politicians take advantage of this discontentment to influence the students to take up political causes in their home areas. This was especially true during the political violence where many students were propagators of violence. Unsubstantiated reports say that local politicians instigated the spate of violence by inciting the youth.

hampers access to food. An individual with low purchasing power has a limit to the quantity and quality of food that that person is able to access. There is also the added factor of poor food policies where the policy makers fail to anticipate situations of low food supply. Adequate food policies would restrict food exports and ensure that there is enough food in stores to meet the needs of the populace during periods of drought. These would also encourage irrigation and proper compensation of farmers thus ensuring continuous supply of food.

Access to education can be interfered with by factors such as poverty which affects the ability to invest as a State or as individuals in education infrastructure. Access to food also affects to access to education on several fronts. Firstly food is a basic need and it is inherent in an individual to focus all their efforts on satisfying their basic needs before they can pursue anything else. Education tends to rank low on the priority list when one has no food to speak of and cannot foresee access to such food in the near future. This is especially the case where food is not being provided in the schools either. The national school feeding programme was a huge motivator for many children attending school. The programme has been negatively affected by the rising food prices leading to an increase in school drop-outs.

On another front food contributes to health and well being of adults as well as children. It ensures cognitive development which involves brain development hence contributing to an individual's ability to learn and understand. Nutrition contributes highly to levels of concentration during the learning process and provides energy for

carrying out day to day activities. Malnutrition causes stunted growth, disability, reduces the body's immunity to disease and hinders brain development hence interfering with the ability to learn.

Food and the lack thereof also affect the right to education indirectly. The food crisis in the country has affected various players in the educational sector thus affecting the right to education. Primary school teachers all over the country recently went on strike demanding pay increments. A major motivator for these demands was the increased cost of living emerging from increased food prices. They claimed that their salaries at the current rate could not cover the cost of food. The strike brought learning to a standstill and even affected the ongoing admission to high schools. The children will be placed under greater pressure as they try to make up for lost time and meet the objectives of the school's first term.

It is no surprise then that the current food crisis in Kenya

Food Security & Access to Education: Views from stakeholders

The issue of increasing food prices and food insecurity has been a recurring problem in Kenya. The issue has been attributed to various causes including the rise in fuel prices, global warming leading to irregular weather patterns and subsequent poor harvests, poor management of natural resources among others. The consequences have been felt all over the country in the form of starvation, malnutrition and even death.

The effect of the food problem can also be traced down to the access to education for children. The rise in food prices has caused a strain on the feeding programs in schools. Cases of increased school drop outs are especially common in schools that serve low income areas because the students are more often than not dependent on the school feeding program as the only source of a decent meal. In cases where the programme still proceeds, nutritional value has had to be compromised so as to maintain the quantities of food that are served.

A visit to several of the partner schools of Youth Alive! Kenya revealed the effects of food on access to education. Mr. Maina, the Principal at Kamukunji High School in Nairobi attests to the effect of the rising food prices on the school feeding program. He said that the school has had to compromise the quality of food and the rations too since the few resources available must be used to purchase learning materials which are of equal if not greater importance. He said that some students do not understand this and sometimes demand high cost foods such as chicken or chapattis, not understanding that the school would only meet these demands at the expense of purchasing learning materials such as chalk, dusters and books.

The cost of the feeding program lies entirely with the parents. The government subsidies only amount to Ksh 500 per student which is insufficient to meet both the students' learning and feeding expenses. When the government delays in sending its funds, the principals are sometimes advised to borrow money from another "account" this is often the food account which further affects the feeding program. Students have been sent home several times because they have not made their contribution to the feeding program. A significant proportion of the student population is from poor families and is already struggling to pay school fees let alone contribute to the feeding program. Consequently the food budget often runs on a defi-

cit. The current food crisis only serves to make this situation worse. Mr. Maina recognised the fact that to some of the students the lunch meal they receive while at school is the only meal they will have that day. These students could drop out should the feeding program come to a close.

had a direct effect on children and their access to education. A report by the Kenya Food Security Steering Group in July 2008 reports that a rise in food prices is likely to induce borrowing from non-food expenditures which would lead to a compromise in expenditure on education, health care and transportation. The report adds that, 'Diet changes are evident with reduction in frequency and composition of meals, which could lead to a precipitous rise in malnutrition and susceptibility to disease... It is anticipated that a rise in school drop outs could also increase as well as the incidents of food riots and heightened crime.' (pg 31).

The relationship therefore cannot be ignored. Food is fundamental to learning and measures need to be taken at policy and implementation level to ensure that a favourable environment is available for learning to take place.

The Principal at Nile Road Secondary School however felt that the situation at her school is a bit different. The budget for the school including the school feeding program is prepared and presented to the parents during the Annual General Meeting for parents and teachers and to the Board of Directors for approval. The parents having agreed to the budget are expected to make the payments for the feeding program and the school fees failure to which the girls are at risk of being sent home. However the principal added that parents who have difficulty making payments are free to visit her office for an agreement on how and when payments can be made. She also recognised that her students are from humble backgrounds and therefore it is possible that some of the students are dependent on the food they get at school. The school has put in place plans to deal with the rising food prices. For instance instead of buying maize meal directly from the shop they instead buy maize and arrange to take it to the mills for the grinding themselves. She also added that the students are very dedicated to learning and would hate to miss school because of food.

The food crisis has not been limited to Nairobi only. News items on television, radio and print media have told the story across of the effects of the crisis and ways that people are using to deal with the issue. In Ukambani on the Eastern Province of Kenya students have dropped out of primary and secondary schools to look for work in towns so as to get money to buy food. Whereas the boys have sought work as casual labourers the girls have left for town centres along the Nairobi- Mombasa Highway where they invariably engage in commercial sex activities. This exposes them to the risk of sexual violence, HIV infection and also puts them in conflict with the law.

Muranga South District has also experienced school children dropping out of school to look for means of obtaining food. Some join their parents in the search while others having been orphaned as a result of the food crisis have had to leave school to be able to fend for themselves and their siblings. One such case was highlighted in the Daily Nation dated 19th January 2009 where a Standard Seven

boy was left to take care of eight of his siblings after their mother died. The youngest who was only months old had been taken to a children's shelter. In Baringo East district in the North Rift, children and their parents have had to walk for over 10km in search of water and pasture for their livestock.

In the Arid North, women and their children are braving the hot sun working in quarries to earn as little as KShs 100 to be able to buy food. Schools are also experiencing a poor turnout since the school feeding program has been affected by the crisis. The school feeding program attracts scores of children due to the general scarcity of food in the area. Now that the feeding programs have been suspended due to poor supply of food, very few turn out for class. In Mbeere, schools have not received food supplies since September 2008 and if supplies are not restored 25,779 students might drop out of school (Daily Nation 30th January). Nationally, 1.5 million children who depended on school feeding programme are staring hunger in the face...'.An assessment by international aid groups in the region indicate that malnutrition among children is above the World Health Organization threshold, peaking at 23%. (Daily Nation 20th January).

A key point of concern is that while absent from school the children apart from having been denied the right to education are likely to engage in other activities that deny them the right to recreation and protection from violence and conflict. In the process of searching for food children are at risk of engaging in criminal activities such as stealing and prostitution that put them in conflict with the law. They also put themselves at risk of both physical and sexual abuse by persons who want to take advantage of their needs.

The food crisis has shown that the policies surrounding the school feeding programmes are in dire need of review. It is the responsibility of both the parents and the government to ensure that children are able to access both food and education. Currently feeding programmes are mainly run on parent's contributions while in some informal schools especially in low income areas the feeding program has received funds from donor organisations.

However, it is now clear that the government needs to be more deliberately involved in school feeding programs so that in times of food shortages schools can continue to run. There are several policy options: the government can make direct contributions into the school feeding program in addition to the subsidy given for school fees; the government may also ensure that the schools are able to access basic food stuffs at subsidised prices.

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Youth Alive! Kenya

Youth Alive! Kenya is an independent national youth-led non-governmental organisation committed to the empowerment of young people in Kenya to take active responsibility for their lives to shape their destiny. Founded in late 1998 and registered as a community-based organisation in 1999 then a national NGO in December 2003, Youth Alive! Kenya has a vision of a free, just and equitable world where young people are able to translate their aspirations and potential into productive and fulfilling life. To this end, our mission is to provide a platform where young people and their communities share skills and explore innate abilities towards lasting development. Working in the areas of Health, Justice & Human Rights, Democracy & Governance and Environment & Livelihoods, we facilitate learning and innovation through partnerships, advocacy, research and public education.

The policy brief is a project component under the Youth Alive! Kenya Justice & Human Rights Programme (JHR). JHR seeks to ensure access to justice by the most vulnerable and most marginalised and to promote the respect for and the protection of human rights in Kenya.

The programme has specialised projects that aid in realisation of the above objectives. One of these projects is the Juvenile Justice Project that seeks to promote an effective juvenile justice system in Kenya bent on restoration of young offenders by improving the quality of rehabilitation provided by government institutions while strengthening community capacity and linkages to support reintegration of discharged child offenders. The project operates in the districts of Nairobi and Kisumu and is implemented in partnership with the Department of Children Services of the Ministry of Gender & Children Affairs.

As part of this process, the project works to foster development of appropriate laws, policies and practices concerning children and the justice system in Kenya and in this end one of the mechanisms adopted for the actualisation of the above is the use of quarterly briefs that will facilitate dialogue and promote reform of policy, legislation and practice around children's rights.

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