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## THE CHILD RIGHTS TO EDUCATION IN SOUTH SUDAN

Jamila Ali Adam\*

### Abstract

Education is a major priority for children in South Sudan. This paper identifies and discusses the challenges facing child rights in education in South Sudan. Literature reviews, policies and Laws were consulted. This paper reveals that primary education age is not in school, and a million adults are illiterate and do not have the awareness to improve both their living conditions and those of their children also its is going to explain the obligations of the State to ensure the rights to access to education, equally and without any discrimination to the light of their legal implication for the achievement of the international requirement on the child right education under provisions laws. However, the ongoing violence, poor health, conflicts, poverty and governmental failures are the major challenges that led to the downfall of the education system in South Sudan. The basic aims of education need to be to ensure that a child's right to education is realized, respected, protected and promoted. Additionally, it also required the State to adopt or capture the general principle of the International Convention on the Rights of the Child (1989), which is to be incorporated into the national laws by the National Legislature. It is also applicable practically through a legal framework on child rights to education in South Sudan. The role played by communities' authority and other civil society to create effective awareness to encourage the various families to the importance and goals of education. Therefore, the government policies must be based on the strategic planning and activities that are needed for child rights access to education. More primary schools are needed to provide free access to primary education for the sustainable development of South Sudan.

### 1. Introduction

Children's rights to education are the teaching and practice of children's rights in school, educational programs or institutions. When fully implemented, a children rights education program consists of both a curriculum to teach children their human rights, and framework to operate the school in a manner that respects children's rights. South Sudan has one of the lowest literacy rates in the world.<sup>1</sup> More than 2.8 million children, or over 70 percent, are out of school in South Sudan, putting their

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\* School of Law, University of Juba, Juba, South Sudan, Phone: +211 921639897, 915366072, E-mail [advocatejamila2017@gmail.com](mailto:advocatejamila2017@gmail.com)

<sup>1</sup> Reported by USAID 2013



futures and the nation's prospects at risk. Some of the out-of-school children dwell in pastoral communities, moving with their cattle and unable to attend regular classes.<sup>2</sup>

Several challenges have faced South Sudan education, including inter-communal conflicts, cattle movements, and girl's early marriage among many others. It can be said that education in South Sudan consistently leads the list of government services that are most highly valued and wanted by the public. This demonstrates that most South Sudanese seek a better education for their children as a top priority. However, with the outbreak of the 2013 conflict, over half of the internally displaced persons (IDPs) are children; which has indicated that children are most affected by the conflict. Education is extraordinary and the key that unlocks doors unleashes potential and unlocks dreams. And when a girl is educated, not only is she given choices for her future and opportunities that can change her life – she can change the world<sup>3</sup> Gender discrimination disproportionately impacts girls globally because there are a range of unique barriers that stop them from accessing and completing their primary and secondary education. And the pandemic has only made this worse. In 2020, it was estimated that up to 20 million secondary school-aged girls have been dropped out of school as a result of COVID-19 pandemic.

## **2. Legal framework and policy issues of child rights to education**

### **2.1 International Instruments**

Various treaties that advocate a guarantee of free and compulsory education are the:

#### **a) Universal Declaration of Human Rights 1948**

Universal Declaration of Human Rights (UDHR), adopted in 1948, states in Article 26: “Everyone has the right to education”. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available, and higher education shall be equally accessible to all on the basis of merit.

However, the Convention wants all the States Parties to have directed to the full development of education and human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace.

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<sup>2</sup> South Sudan/ what- we-do-/ education available at [WWW.UNICEF.org/](http://WWW.UNICEF.org/) . Accessed on 19<sup>th</sup>/06/2023

<sup>3</sup>[www.plan.org.au/news/education/barriers-to-girls-education](http://www.plan.org.au/news/education/barriers-to-girls-education).



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The Convention also gave the Parents the rights to choose the kind of education that shall be given to their children.<sup>4</sup>

**b) International Convention on Economic, Social and Cultural Rights 1966.**

The International Covenant on Economic, Social and Cultural Rights (ICESCR) was adopted by the UN General Assembly in 1966. Article 13 is the most comprehensive article on the right to education. It recognises the Universal right to education without discrimination of any kind and sets forward a framework to achieve the full realisation of this right, including: primary education shall be compulsory and available free to all; secondary education in its different forms, including technical and vocational secondary education, shall be made generally available and accessible to all by every appropriate means, and in particular by the progressive introduction of free education; higher education shall be made equally accessible to all, on the basis of capacity, by every appropriate means, and in particular by the progressive introduction of free education; fundamental education shall be encouraged or intensified as far as possible for those persons who have not received or completed the whole period of their primary education; the development of a system of schools at all levels shall be actively pursued, an adequate fellowship system shall be established, and the material conditions of teaching staff shall be continuously improved.

The article also establishes the liberty of parents and, when applicable, legal guardians to choose for their children schools other than those established by the public authorities, which conform to such minimum educational standards as may be laid down or approved by the state and to ensure the religious and moral education of their children in conformity with own convictions.

Article 14 obliges each state party to the covenant which, at the time of becoming a party, has not been able to secure in its metropolitan territory or other territories under its jurisdiction compulsory primary education, free of charge, undertakes within two years, to work out and adopt a detailed plan of action for the progressive implementation, within a reasonable number of years, to be fixed in the plan, of the principle of compulsory education free of charge for all.<sup>5</sup>

**c) Convention on Elimination of all Forms of Racial Discrimination 1966.**

The International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) is a United Nations Convention. A third-generation human rights instrument, it commits its members

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<sup>4</sup> Universal Declaration of Human Rights, 1948, arts 26

<sup>5</sup>International Covenant on Economic, Social and Cultural Rights, 1966, arts 13 and 14



to eliminating racial discrimination and promoting understanding among all races.<sup>6</sup> Bearing in mind the Convention Concerning Discrimination in Respect of Employment and Occupation adopted by the International Labour Organisation in 1958 and the Convention against Discrimination in Education adopted by the United Nations Educational, Scientific and Cultural Organisation in 1960.<sup>7</sup> In compliance with the fundamental obligations laid down in Article 2 of this convention, states parties undertake to prohibit and eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights:

The right to education and training. However, the convention stipulated that the state parties undertake to adopt immediate and effective measures, particularly in the fields of teaching, education, culture and information, to combat prejudices which lead to racial discrimination and to promoting understanding, tolerance and friendship among nations and racial or ethnical groups, as well as propagating the purposes and principles to the Charter of the United Nations, the Universal Declaration of Human Rights, the United Nations on the Declaration on the Elimination of All forms of Racial Discrimination.<sup>8</sup>

#### **d) International Convention on Civil and Political Rights 1996**

The International Covenant on Civil and Political Rights (ICCPR) contains general provisions from which children are entitled to benefit as well as certain specific provisions on safeguards for children in the administration of education and as well as a member of a family unit. Article 18 (4) stated that every states parties to the present Covenant undertake to respect the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own conventions.<sup>9</sup>

#### **e) Convention on the Rights of the Child**

There are other treaties which relate directly or indirectly to a child's rights to education. These treaties include those that secure the rights of teachers, others on indigenous and tribal peoples rights, minimum age of employment and child labour. Several governments are complied with treaties on child rights to education without much reservation. However, there are countries where the right to

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<sup>6</sup><https://en.m.wikipedia.org/wiki/international-convention-on-the-elimination-of-all-forms-of-racial-discrimination>. Accessed on 18/07/23

<sup>7</sup><https://www.ohchr.org/en/instruments-mechanisms/instruments/international-convention-elimination-all-forms-racial>. Accessed on 18/07/2023

<sup>8</sup> Convention on the Elimination of All forms of Racial Discrimination, 1966, arts 5 (v) and 7

<sup>9</sup> International Convention on Civil and Political Rights (ICCPRs) arts 18(4)



education is being realized. Article 28 of the Convention on the Rights of the Child requires the government to:

- Make primary education compulsory and available free to all;
- Encourage the development of different forms of secondary education and to make them available and accessible to every child while taking appropriate measures such as the introduction of free education and offering financial assistance in case of need;
- Make higher education available to all on the basis of capacity by every appropriate means.

**f) UNESCO Convention against Discrimination in Education 1960**

Article 3 in order to eliminate and prevent discrimination within the meaning of the Convention, the States Parties thereto undertake: (a) to abrogate any statutory provisions and any administrative instructions and to discontinue any administrative practices which involve discrimination in education; (b) to ensure, by legislation where necessary, that there is no discrimination in the admission of pupils to educational institutions; (c) not to allow any differences of treatment by the public authorities between nationals, except on the basis of merit or need, in the matter of school fees and the grant of scholarships or other forms of assistance to pupils and necessary permits and facilities for the pursuit of studies in foreign countries; (d) not to allow, in any form of assistance granted by the public authorities to educational institutions, any restrictions or preference based solely on the ground that pupils belong to particular group; and (e) to give foreign nationals resident within their territory the same access to education as the given to their own nationals.

The Convention prescribe that State parties should undertake furthermore to formulate, develop and apply a national policy which, by methods appropriate to the circumstances and to national usage, will tend to promote equality of opportunity and treatment in the matter of education and, in particular: (a) To make primary education free and compulsory; make secondary education in its different forms generally available and accessible to all; make higher education equally accessible to all based on individual capacity; assure compliance by all with the obligation to attend school prescribed by law; (b) To ensure that the standards of education are equivalent in all public educational institutions of the same level, and that the conditions relating to the quality of the education provided are also equivalent; (c) To encourage and intensify by appropriate methods the education of persons who have not received any primary education or who have not completed the entire primary education course and the continuation of their education based on individual capacity.

Article 5 stipulated that States parties to the Convention agree that:



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Education shall be directed to the full development of the human personality and the strengthening of respect for human rights and fundamental freedoms; it shall promote understanding, tolerance and friendship among all nations, racial or religious, and shall further the activities of the United Nations for the maintenance of peace.

It is essential to respect the liberty of parents and, where applicable, of legal guardians, firstly to choose for their children institutions other than those maintained by the public authorities but conforming to such minimum educational standards as may be laid down or approved by the competent authorities and, secondly, to ensure in a manner consistent with the procedures followed in the State for the application of its legislation, the religious and moral education of the children in conformity with their own convictions; and no person or group of persons should be compelled to receive religious instruction inconsistent with his or their convictions.<sup>10</sup>

It is essential to recognise the right of members of national minorities to carry on their own educational activities, including the maintenance of schools and, depending on the educational policy of each State, the use or the teaching of their own language, provided, however:

That this right is not exercised in a manner which prevents the members of these minorities from understanding the culture and language of the community as a whole and from participating in its activities or which prejudices national sovereignty

That the standard of education is not lower than the general standard laid down or approved by the competent authorities;

That attendance at such schools is optional.

## **2.2 Regional Instrument**

### **a) African Charter on Human and People's Rights (Banjul Charter) 1981**

The African Charter on Human and People's Rights 1981 encompasses civil and political rights as well as economic, social, and cultural rights and rights to education. In regard to children, it emphasizes the rights of the family and duties towards the family rather than the rights and duties of individual family members, which can be viewed as a reflection of African customary law.

The African Charter on Human and People's Rights stipulated that every individual shall have the right to education. State parties to the present Charter shall have the duty to promote and ensure through teaching, education and publication, the respect of the rights and freedoms contained in the

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<sup>10</sup> UNESCO, Convention against Discrimination in Education, 1960, arts 3, 4 and 5



present Charter and to see to it that these freedoms and rights as well as corresponding obligations and duties are understood<sup>11</sup>.

**b) African Charter on the Rights and Welfare of the Child, 1990**

The African Members States of the Organisation of African Unity, parties to the present Charter entitled “African Charter on the Rights and Welfare of the Child.”

The charter stated that every child shall have the right to an education, and the education of the child shall be directed to the promotion and development of the child’s personality, talents and mental and physical abilities to their fullest potential.

It also stipulated that States parties to the present charter shall take all appropriate measures with a view to achieving the full realisation of this right and shall, in particular, provide free and compulsory basic education; encourage the development of secondary education in its different forms and to progressively make it free and accessible to all; make the higher education accessible to all based on capacity and ability by every appropriate means; take measures to encourage regular attendance at schools and the reduction of drop-out rates; take special measures in respect of female, gifted and disadvantaged children, to ensure equal access to education for all sections of the community.

States parties to the present charter shall respect the rights and duties of parents, and where applicable, of legal guardians to choose for their children’s schools, other than those established by public authorities, which conform to such minimum standards may be approved by state, to ensure the religious and moral education of the child in a manner with the evolving capacities of the child.

States parties to the present charter shall appropriate measures to ensure that children who become pregnant before completing their education shall have an opportunity to continue with their education on the basis of their individual ability. However, no part of the article 11 shall be construed as to interfere with the liberty of individuals and bodies to establish and direct educational institutions subject to the observance of the principles set out in paragraph I of article 11 and the requirement that the education given in such institutions shall conform to such minimum standards as may be laid down by the States.<sup>12</sup>

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<sup>11</sup> African charter on human and people’s rights, 1981, arts 17 and 25

<sup>12</sup> African charter on the rights and welfare of the child, 1990, art 11





**c) Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa (2003)**

The protocol to the African Charter on Human and People's Rights on the Rights Women in Africa obliges the states parties to take all appropriate measures to eliminate all forms of discrimination against women and guarantee equal opportunity and access in the sphere of education and training; integrate gender sensitisation and human rights education at all levels of education curricular including teacher training.

It also encourage states parties to the Charter to take specific positive action to promote education and training for women at all levels and in all disciplines, particularly in the fields of science and technology, and to enrol and retention of girls in schools and other training institutions and the organisation of programmes for women who leave school prematurely.<sup>13</sup>

**d) African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention) 2009**

The Kampala Convention provide internally displaced persons to the fullest extent practicable and with the least possible delay, with adequate humanitarian assistance, which shall include food, water, medical, education and any other necessary social services, and where appropriate, extend such assistance to local and host communities.<sup>14</sup>

### **2.3 National Legal Framework**

**a) The Translational Constitution of the Republic of South Sudan, 2011 [as amended]**

The Constitution of South Sudan recognises every citizen's right to education. The constitution states that the government should provide access to education without discrimination as well as to religion, race, ethnicity, health status, including HIV/AIDS, gender or disability. The constitution also stipulated that all levels of government shall promote education at all levels and shall ensure free and compulsory education to all citizens at the primary level; they shall also provide free illiteracy eradication programmes.<sup>15</sup>

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<sup>13</sup> Protocol to the African charter on human and people's rights on the rights of women in Africa, 2003, art 12

<sup>14</sup>Kampala convention, 2009, art 9.2(b).

<sup>15</sup> Transitional Constitution of the Republic of South Sudan 2011, art 29





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**b) The Child Act, 2008**

The South Sudan Child Act in section 14 stipulated that every child has the right to free education at the primary level, which shall be compulsory, and it also stated that child's right to education shall be respected regardless of the type or severity of the disability he or she may have<sup>16</sup>.

**c) General Education Act, 2012**

This Act gives each and every South Sudanese citizen rights to education as stated in section 18 (1-2) (compulsory formal education), 'every parent or guardian of a learner shall ensure that his/her child is enrolled and attends schools when he/she attains the age of 5 or 6 years. However, the Act gives the County Education Department rights to investigate the circumstances of the child's failure to enrol in school, take appropriate measures to remedy the situation and give notice to the parent or guardian where a child who attains compulsory school attendance age fails to enrol in a school.<sup>17</sup>

The right to education is a complex right (or bundle of rights) not universally recognised as a fundamental human right. It lies at the boundary between 'civil and political' and 'economic and social rights.' At its heart lies the positive obligation of the state to provide schooling for its citizens. However, the right to education is closely linked to liberty rights, the rights of parental choice of education and the right of the child.

**3. Discussion and Result**

Education does not exist in a vacuum. Ensuring that every child has access to quality and respectful learning environments throughout his or her childhood necessitates action far beyond ministries of education. The right to education can only be realized in a political and economic environment that acknowledges the importance of transparency, participatory and accountable processes, as long as broad based collaboration both across government and in the wider society. It needs a long-term strategic commitment to the provision of adequate resources, development of course department structures, engagement with the energies and capacities of parents and local communities, and partnership with non-governmental organization.

Education is a legitimate right for any citizen in South Sudan according to the Bill of Rights in the country's first post-independence Constitution, but the civil war which broke out in 2013 came with attendant challenges that negatively impacted and continue to debilitate the sector.

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<sup>16</sup> Child Act, 2008, s 14

<sup>17</sup> General Education Act, 2012, s 18 (1-2)



Many learners could not continue going to school due to displacement occasioned by the war. Many teachers even abandoned the profession altogether due to safety concerns and lack of or delayed pay. The government's priorities were upended, and monies were diverted to the war at the expense of vital sectors like education and health.

In addition to the development activities on the new nation-building, South Sudan was engaged through emergency response, for example, flood, famine, tribal conflict, and international conflict in the country's borders areas. South Sudan's Institution for Education cluster has committed to ensuring that all children affected by current emergencies have to be protected of their right to access education. That must reflect to the state institution of educational sector, strategic plan to coordinate education cluster and the local communities to create effective and strengthen awareness among the communities and to ensure their role to promote the children's right to education to access schools in action participation through school building in their areas which was affected by conflict.

Therefore, inequality in South Sudan can be attributed to a number of factors, the lack of funds and infrastructure, along with a poor and illiteracy population make establishing on effective education system a challenge. There are also certain traditional cultural ideas about women, which make it more difficult for girls to get an education than their male counterparts.

### **Quality and Equality in Education (for Inclusive Education) for Children.**

The UN Convention on the Rights of the Child (CRC),<sup>18</sup> adopted by the General Assembly of the United Nations on 20 November 1989, is seen as a revolutionary document because of its explicit focus on 'the best interests of the child' and its ratification by almost all countries of the world, except the USA. It should be noted that by ratifying the CRC Countries officially undertake a commitment to ensure that children are treated as claim- holders and that they have fundamental rights as individual persons.

Although CRC enjoys such global recognition and an almost global consensus on what constitutes children's rights, numerous challenges exist in implementing its principles at the ground level, namely in schools. This school-level challenge is highlighted as a particularly pressing issue in academic and policy circles since children spend a significant portion of their time in schools.

It has been pointed out; that children's education rights can be classified along three tracks<sup>19</sup>, first, children have the right to (inclusive) education, as stated in Articles 23 and 28 of the CRC. Second,

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<sup>18</sup> The UN Convention on the Rights of the Child (CRC), adopted by the General Assembly of the United Nations on 20 November 1989.

<sup>19</sup> Verhellen, Children's Rights & Education. (A Three Track Legally Binding imperative). 1993, volume 14



Children have rights within education: the right to non – discrimination (Article 2), the right to participate in educational decisions that affect them (Article 12), and the right to freedom of expression (Article 13). Third, Children have rights through education which means they have the right to know their rights and to develop respect for human rights and fundamental freedoms (Article 29, 42). This third track implies the need for children’s rights education in school.

### **State Obligation**

The Convention on the Rights of the Child, as international law, specifically obligates governments to provide a free primary school education for their young citizens, to make secondary and higher education available, to provide vocational information, to take measures to encourage school attendance, to assure that school discipline is administered ‘in a manner consistent with the child’s human dignity’, and to develop each child’s potential fully. These and the other standards specific to education are included in the convention (28 and 29). Additionally, all the other rights included in the convention should be respected in and through education. For example, in accord with Article 2, a child should not be subjected to unfair discrimination while being educated, and simultaneously, the child should learn to deal with others similar and different from him or herself in ways that are not unfairly discriminatory.

National and local school systems, individual school and classroom policy and practice should apply the standards of the convention explicitly and implicitly.

#### **- Obligations to ensure the right to access to education**

Legal standards on the right to education encompass two broad components:

##### **1- Enhancement of access of all to education on the basis of equality and non-discrimination.**

Access to education refers to the equal opportunity for people to learn, regardless of class, gender, ethnicity, or mental and physical disabilities. Universal access strives to empower all students to take full advantage of high-quality education. While access to education is treated as a basic right in many developed countries, laws protecting educational access are primarily intended to protect primary and secondary students from discrimination. Broader universal access, which uses multimodal strategies to keep underserved students on track with their peers, still needs work.

##### **2- Freedom to choose the kind (public or private institutions) and content (religious and moral) of education.**



Freedom of education is the right for parents to have their children educated in accordance with their religious and other views, allowing groups to be able to educate children without being impeded by the nation-state. All children deserve a great education, no matter where they live. At its heart, educational choice is simply the idea that all parents, regardless of means, should be free to choose where and how their children are educated. The South African Charter of Religious Rights and Freedoms Section 15 allows for observance of religious observances in State or private schools provided they are compliant with other laws.<sup>20</sup>

Both aspects represent the spirit and cardinal essence of the right to education.

The demanding nature of the obligations involved in ensuring the right to education is reflected in the number and variety of reservations, declarations, and objections relating to the relevant article in the Convention on the Rights of the Child.

However, at least four components of the right to education can be gleaned from various legal provisions on the right to education:

- Equal enjoyment of and equal access to educational opportunities and facilities
- Compulsory and free primary education
- Generally available and accessible secondary education and equally accessible higher education, Freedom of choice in education, and freedom to establish private institutions.
- Human rights education is a fundamental human right. Human Rights Education (HRE) is not only a moral right but also a legal right under international law. **Article 26 of the Universal Declaration of Human Rights** states that everyone has a right to education and that “Education shall be directed to the full development of the human personality and the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace.” Furthermore, Article 28 of the Convention on the Rights of the Child states that “school discipline shall be administered in a manner consistent with the child’s dignity. Education should be directed to the development of the child’s personality, talents, and abilities, the respect for human rights and fundamental freedoms, responsible life in a free society, understanding, tolerance and equality, and the development of respect for the natural environment.”<sup>21</sup>

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<sup>20</sup> South African Bill of Rights Article 15

<sup>21</sup> Universal Declaration of Human Rights, (adopted 10 December 1948) (UDHR) articles 26 and 28



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The Covenant on Economic, Social and Cultural Rights (CESCR), in its General Comment 13, identifies elements of the state's obligations with respect to the right to education as follow:

### **Availability**

Ensuring that primary schools are available for all children necessitates a considerable investment, which is amplified by post-compulsory education and universities. The State is not the only investor; international human rights law obliges it to be the investor of last resort to ensure that primary education is made available for all school-age children. Making primary education available to dispersed rural communities, some of whom may be nomadic, illustrates the scope of the challenge. Ensuring that education is available revolves rarely, if ever, around funding. The freedom of parents and communities to establish schools has been part of international human rights law since its creation. It is guaranteed amongst civil and political rights and is therefore subject to international as well as domestic legal enforcement.

The duty to provide compulsory and free primary education is undoubtedly a prerequisite for realising the right to education. The CESCR, in its General Comment 11 on Article 14 of the ICESCR considers that states parties have a clear and unequivocal obligation to draw up a plan of action for ensuring compulsory and free primary education. The Committee has stated that lack of educational opportunities often reinforces their subjection to various other human rights violations.

According to the Special Rapporteur on the Right to Education. "The state's obligation to make primary education free of charge is frequently, albeit erroneously, associated with state's provision of primary education. The state's obligation to make primary education is in quite a few countries implemented through subsidies to a diverse range of primary schools."<sup>22</sup>She has also stated: 'the first state obligation relates to ensuring that primary schools are available for all children, which necessitates a considerable investment. The state is not the only investor of last resort to ensure that primary schools are available for all school-age children. If the intake capacity of primary schools is below the number of primary school-aged children, legal provisions on compulsory education will not be translated into practice and access to education will remain a need rather than a right'<sup>23</sup>.

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<sup>22</sup> Commission on Human Rights, preliminary Report of the Special Rapporteur on the Right to Education, Ms. Katarina Tomasevski, UN Doc. E/CN.4/1999/49 (13 Jan. 1999).

<sup>23</sup>Ibid., paras. 51-52



The provision of secondary and higher education is also considered an element of the right to education. The requirement of “progressive introduction of free education” does not mean that can absolve itself from its obligations.

The other facets of the obligation to ensure that schooling is available are safeguards against abuses of power by the government. A government may close a university because professors and students have challenged the official orthodoxy by exercising their freedom of expression. It may disregard the right to education and breach its obligation to ensure it is available. The African Commission on Human and Peoples’ Rights found in 1996 that a two-year-long closure of universities and secondary schools in Zaire (as it was at the time) constituted a violation of Article 17 of the Charter, which guarantees the right to education.

Legal challenges of un-available education follow the rule of inverse proportion: where education is the least available, its absence is attributed to poverty, and there are no legal challenges. The most important reason is that no legal obligation can force the state to make education available if this is beyond its powers; nobody can be legally obliged to do the impossible. English courts have held that this obligation requires the local authorities to do whatever they reasonably can to ensure that education is available. In one particular case, the duty of the local education authority to secure sufficient school places for all children within the compulsory school age was not fully implemented, and 300 children were deprived of primary education because of a shortage of teachers. The court held that the authority did whatever was in its powers to rectify the situation and was thus not in breach<sup>24</sup> of its statutory duty.

Finally, the CESCR has stated that the party cannot escape the unequivocal obligation to adopt a plan of action the grounds that the necessary resources are not available.

### **Accessibility**

The second state obligation relates to accessibility. At a minimum, governments are obligated to ensure the enjoyment of the right to education by guaranteeing access to existing educational institutions by all based on equality and non-discrimination.<sup>25</sup>

The state’s affirmative obligation to ensure equal access to educational institutions encompasses both physical and constructive access. In the case of elderly persons, for example, the Vienna International

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<sup>24</sup> *R. v. Inner London Education Authority, ex parte Ali*, [1990] C.O.D. 317, [1990] 2 ADMIN.L.R. 822, 828B.

<sup>25</sup> Equality in law precludes discrimination of any kind; whereas equality in fact may involve the necessity of different treatment in order to attain a result which establishes an equilibrium between different situations. *Minority schools in Albania*, Advisory Opinion, P.C.I.J., Series A|B-No.64(1935).



Plan of Action on Aging calls for easier physical access to institutions and constructive access to education through overcoming stereotyped images of older persons suffering from disabilities and or being incapable of functioning independently<sup>26</sup>. Similarly, as provided for in article 10 of the CEDAW, governments are obligated to take all appropriate steps towards the “elimination of any stereotyped concepts of roles of men and women at all levels and in all forms of education” through such means as encouraging “the revision of textbooks and school programs and the adaptation of teaching methods.” Under that provision, women and girls also have a right to equal access to specific educational information (including family planning advice) and sports programs. Migrant workers and Members of their Families who are officially admitted to host nations are also guaranteed the right to constructive access to education as provided in articles 14 and 15 of the European Convention on the legal status of migrant workers in so far as the host nation must take action, where practicable, teach in the migrant workers’ mother tongues<sup>27</sup>.

The right to education has been affirmed for disabled persons. Rule 6 of the standard Rule on the equalization of opportunities for persons with Disabilities provides that “states should recognize the principle of equal primary, secondary, and tertiary educational opportunities for children, youth, and adults with disabilities, in integrated settings<sup>28</sup>.” To this end, the CESCR directs states parties to “ensure that teachers are trained to educate children with disabilities within regular schools and that the necessary equipment and support are available to bring persons with disabilities up to the same level of education as their non-disabled peers.<sup>29</sup>” similarly, children with physical and mental disabilities are guaranteed the right to training towards “achieving the fullest possible social integration, individual development” under article 13 of the African Charter on the Rights and Welfare of the child.<sup>30</sup>

### **Acceptability**

An important element of acceptability relates to the child-friendly nature of the schools. “It is imperative that education respect the right of the child to be curious, to ask questions and receive

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<sup>26</sup> Report of the World assembly on Aging, Vienna International Plan of Action on Aging, Vienna, 26 July-6 August 1982, publication, Sales No. E82.I.16.

<sup>27</sup> European Convention on the Legal Status of Migrant Workers, art.14, ETS NO. 93, adopted 24 Nov. 1977, entered in force 1 may 1983.

<sup>28</sup> Standard Rules on the Equalization of opportunities for persons with Disabilities, annexed to 48|96 of 20 December 1993, Rule 6, UN Doc. A|RES|48|96 (1993).

<sup>29</sup> CESCR, General Comment 5, persons with disabilities (1994), UN doc.

<sup>30</sup> African Charter on the Rights and Welfare of the Child, 1990.





answers, to argue and disagree, to test and make mistakes, to know and not know, to create and be spontaneous.”<sup>31</sup>

### **Adaptability**

Normally, what children should learn at school and how the learning process should be organized is the source of never-ending challenges and change. The usual approach is to review the contents and process of learning from the viewpoint of the child as a future adult, while the Convention on the Rights of the Child requires that the interests of the child be given priority. The choice in the Convention to refer to the best interests of the individual child highlights the need for the educational system to become and remain adaptable. The challenge is immense- the system of education is required to adapt to each individual child, against the historical heritage of excluding all the children who were deemed not able to adapt to the system of education as it was.

South Sudan ratified the Convention on the Rights of the Child on 23 January 2015; South Sudan became the 195th State party to the Convention on the Rights of Child (CRC). The CRC is the most widely ratified international human rights treaty. In a media statement, the committee on the Rights of the Child welcomed the ratification and went on to urge states that have ratified the convention to: “fulfil their obligations to respect protect and fulfil the human rights of all children. Ratification is an important step that brings with it a commitment towards implementation.”<sup>32</sup>

The 2014 National Inclusive Education Policy position paper aims to facilitate the ‘creation of positive and successful environment for all learners through the process of inclusive education and provides those for those with special needs and disabilities to have equal access to quality and relevant education and training.’ It intends to provide the necessary support for all children with disabilities in regular classroom settings. In parallel, the alternative education policy targets the most disadvantaged learners by providing them with an education that is adapted to their learning and lifestyle needs and flexible in terms of timings, location and mode of delivery. Finally, the 2017-2022 General Education Strategic Plan advocates with communities to improve enrolment and retention for different vulnerable groups, including girls and children with disabilities. Article 29 of the 2011 Constitution, enshrines the right to education for all citizens and states that all levels of the government must provide access to education without discrimination based on religion, race, ethnicity, or health status including HIV/AIDS, gender or disability.

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<sup>31</sup> Thomas Hammarbergy, “A school for children with Rights,” in *Innocent Lectures*, (UNICEF International Child Development Centre, Florence, 1997).

<sup>32</sup> <https://www.right-to-education.org/news/south-sudan-ratifies-convention-rights-child>. Accessed on 18/07/2023



South Sudan's Constitution already guarantees all children free and compulsory primary education and free illiteracy eradication programs. Extending free education to all South Sudanese including secondary schooling will offer millions of children life-long benefits. Secondary education, including technical and vocational training, can empower young people with the knowledge and skills needed to thrive and contribute to their communities. Children with secondary education are more likely to find work as adults, earn more, and escape or avoid poverty.

Adolescents who do not complete secondary school are more likely to experience the worst forms of child labour, child marriage, sexual violence, trafficking, and recruitment by armed groups, which the government did not implement despite the laws which have been enacted.

The government will also need to ensure that children with disabilities, who often face stigma, discrimination, and abuse at school, are not left behind. It will need to enhance the capacity of teachers and ensure their adequate and timely compensation.<sup>33</sup>

According to the 2012 General Education Act, learners have special education needs when those needs "require special educational provision so that they can learn to the best of their abilities." These learners did/do not have access to education due to lack of facilities, conflict, poverty, language, gender or culture<sup>34</sup>.

According to the 2014 National Inclusive Education Policy position paper, the government's overall goal for education in South Sudan adopts the principles of inclusive education through this statement: "A society in which all persons regardless of their disabilities and special needs achieve education to realize their full potential." The inclusive education policy, therefore, should facilitate the creation of positive and successful environment for all learners through the process of inclusive education and provide those with special needs and disabilities with equal access to equality and relevant education and training.

Inclusive education means that 'school should accommodate all children regardless of their physical, intellectual, social, emotional, linguistic or other conditions. This should include disabled and gifted children from remote or nomadic populations, children from linguistic, ethnic or cultural minorities and marginalised areas or groups.'

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<sup>33</sup> Transitional Constitution of South Sudan, 2011, art 29.

<sup>34</sup> General Education Act, 2012.



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#### 4. Challenges Facing Children's Rights to Education

Despite the country's challenges, South Sudan has embraced education as a cornerstone of development. Since its independence in 2011, the Ministry of Education, Science and Technology (MoEST) has elaborated on the first-ever policies and strategic plans to realize the goals of Education for All (EFA). South Sudan aims to achieve EFA, the Millennium Development Goals (MDGs), in 2022 and hopes to be a fully literate society by 2040.

Of the issues affecting South Sudan's education sector, conflict and insecurity are paramount inhibiting factors, the other factors in failure to implement the child's right to education may be poverty and inadequate government's funds. Sometimes this failure is the result of government policy in which budgetary allocations place education at the bottom of the list priorities. At other times failure maybe subtler. For example, there may be an adequate number of schools and teachers, but not enough supplies or, in cases where children must supply their own books; parents may be too poor to buy them, thereby leaving children unable to study properly. Other interfering factors may include such things as: Teachers shortages, this is partly a result of the budget deficit, as underfunded schools are forced to downsize staff. Reducing the number of teaching assistants and teachers as well as cutting learning resources spending are the most common responses to financial pressure in primary, secondary and higher education in the country. It is difficult for schools in urban and rural areas of South Sudan to attract qualified teachers, because of a lack of available financial resources, also Inadequate Learning infrastructures is another factor; Facilities may be inadequate in many ways, including being over-crowded or dangerous, lacking in adequate sanitary facilities and lacking water for hygiene. The health implications of inadequate toilets and sanitation are very serious. Girls in particular are pushed out school if facilities are inadequate. Children in rural areas sometime walk 2 to 3 hours to attend school because there are no school buildings near where they live.

Therefore, learners in the village attend classes under trees or in semi-permanent buildings, and government schools in the city are overcrowded.

An additional challenge faced by children in certain regions is conflict, which usually leads to displaced people from their own homes. According to UNICEF, more than 2 million children, most of them girls, were out of school due to conflict, COVID-19, and other challenges that hindered their access to education, including financial barriers and flooding.

In an attempt to redress South Sudan's education sector, the East Africa Community (EAC) has partnered with the United Nations Children's Fund (UNICEF) and the United Nations High



Commissioner for Refugees (UNCHR). The former will, amongst other activities, establish and rehabilitate learning spaces with Water, Sanitation and Hygiene (WASH) facilities and procure and distribute teaching and learning materials to target schools. The later will prioritize teacher training, especially for those who serve refugee populations, accelerated- education programmes and community sensitization with regard to the importance of girls' enrolment<sup>35</sup>

## **5. Global challenges that faced child's rights education**

The global disruption to education caused by the COVID-19 pandemic constitutes the worst education crisis on record. Most of the countries in the world closed schools, vocational training, and higher education institutions as part of their strategies to combat the pandemic, and nearly all of the world's students have been affected. In a new report, the State of the Global Education Crisis: a plan to Recovery report shows that in low and middle-income countries, the share of children living in Learning poverty, already 53 per cent before the pandemic, could potentially reach 70 per cent given the long school closures and the ineffectiveness of remote learning to ensure full learning continuity during school closures.

“The COVID-19 crisis brought education systems across the world to a halt,”<sup>36</sup> schools remain closed for millions of children, and others may never return to school. The loss of learning that many children are experiencing is morally unacceptable. The potential increase of learning poverty might have a devastating impact on future productivity, earnings, and well-being for this generation of children and youth, their families, and the world economies.

The COVID-19 pandemic shut down schools across the world, disrupting education for 1.6 billion students at its peak, and exacerbating the gender divide. In some countries, greater learning losses among girls and an increase in their risk of facing child labour, gender-based violence, early marriage, and pregnancy. To stem the scars of this generation, schools must be reopened so to keep them up, target outreach to return learners to school, and accelerate learning recovery.<sup>37</sup>

Countless children around the world are deprived of a basic education. Poverty and lack of resources are major contributing factors. Many children work to raise money for their families who cannot afford to send them to the local school. Further inequities exist in the gender imbalance among those who do participate in education. Two-thirds of the global population of girls and young women do not attend school due to varying social, cultural, and religious requirements and expectations.

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<sup>35</sup> Educate A Child (EAC)

<sup>36</sup> Reported by, Jaime Saavedra World Bank Global Director for Education.

<sup>37</sup> Reported by, Robert Jenkins UNICEF Director of Education.



The implications for these children, their families and the communities to whom they belong are far-reaching. Young children are exposed and vulnerable in relation to the systems of administration and power developed by their elders.

Unequal access to university education is likely to persist in most countries globally despite concerted attempts to expand opportunities by 2030, according to a UNESCO Position Paper on Education post-2015.

It warns that the problem will not be limited to the scarcity of places: there will also be a knowledge divide caused by a lack of opportunities to acquire technology skills.

## **6. Conclusions**

Education is the key to success in life. The Republic of South Sudan as a new member of the United Nations which attained its independence on July 9<sup>th</sup> 2011, has a duty and obligation to fulfil the right to education for its people as provided in many international treaties, regional and national laws such as the Universal declaration of Human Rights (UDHR), International Covenant on Civil and Political Rights (ICCPR), United Nations Convention on the Child Rights (UNCRC), International Covenant on Economic, Social and Cultural Rights (ICESCR), and among others regional instruments on child's rights education, and the Transitional Constitution of the Republic of South Sudan, 2011, Child Act, 2008 and South Sudan General Education Act, 2012, guarantee child rights to education.

Like all human rights, the right to education imposes levels of obligation on states: to respect, protect and fulfil the right to education. The obligation to respect requires states to avoid measures that hinder or prevent third parties from interfering with the enjoyment of the right to education. The obligations to fulfil means that States must take positive measures that enable and assist individuals and communities to enjoy the right to education. However, the obligations related to each of the essential features of the right to education are categorised under four areas: availability, accessibility, acceptability, and adaptability.

The government policies must be strategic in planning activities for the needs of the affected children to be able to access education, to establish more primary schools for children who are displaced during an armed conflict in the country, and also to include dropout children (pastoralist children and streets children) to access free primary education which must be put into consideration. Early childhood and lifestyle which is to be addressed by national education law and government policies that include the Child Act of 2008, and General Education Act of 2012. These minimum standards for education



expressed commitment to the provision of protective education for all children who are affected by conflict in the country.

The government has to provide facilities for child right to education in order to promote the safety and well-being of trained teachers and other education personnel linked to education with protection services, as well as equal access to relevant education opportunities. The Government have to supervise and monitor supporting mechanisms for the child's right to education especially for the teachers and other education personnel to function effectively, and professionally, to facilitate the training for teachers at the primary level, providing learning materials, adequate food for the child at school, clean water, and medical facilities for the children.

To conclude, Child Rights Education is being a right in itself and can be used to realize all other rights of the child by the government, communities and a child after growing up.

## **7. Recommendations**

- a) The legislative framework should make it mandatory to include children's rights to education in the curriculum at all levels of the country's education system, starting with early years and continuing until tertiary education, as a separate topic within the curriculum. It should also ensure that children's rights to language and principles are incorporated into all aspects of the curriculum.
- b) The legislative framework should seek to ensure that comprehensive and whole-school approaches to implementing the principles are implemented so that children can benefit.
- c) The government of South Sudan should ensure that all children enjoy their right to free primary education without discrimination. No child should ever be denied their right to education because of school fees or related costs of education. Strategies to eliminate or reduce the costs of attending school could include lifting fees, providing stipends conditional on school attendance, provision of free uniforms or lifting of uniform requirements, provision of free textbooks, and provision of transportation, for example, bicycles or bus services or free school meals to attract poor children to school.
- d) Government should focus on policies that favour vulnerable groups as disadvantaged areas. Targeted scientific measures are important to protect the legal right to education of girls, children with disabilities and children in low-income areas.
- e) The most successfully Child Rights Education (CRE) initiatives take a holistic approach to child Rights Education aiming to raise awareness through teaching but also to incorporate



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children's rights values and principles in all aspects of the school environment and to develop mutual rights respecting relationships, these ensure teaching about children's rights education.

- f) The government should review its educational guidelines, policy on automatic promotion and instituting a reward mechanism for the best performers and a punitive increase for those found culpable. It should also design and implement a plan of action for improving the quality of public education in South Sudan including reassessing learning outcomes.
- g) Recommend an increase in budget allocation. The government should progressively increase financial investment in the public education sector to the minimum international target
- h) The communities' authority and other civil society should create effective awareness, by encouraging families for the importance and goals of education.





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