

DIPLOMA IN EDUCATION LEADERSHIP AND MANAGEMENT

MODULE 1: EDUCATION, LAW AND POLICY

UNIT 2: POLICY & LEGAL FRAMEWORK OF EDUCATION

Kenya Constitution , 2010

- ▶ **The right to education:** Article 43 of the Constitution States that every person has the right to education
- ▶ **Devolution of education services:** The Kenyan constitution has six schedules. The Fourth schedule (Article 185 (2), 186(1) and 187(2) addresses the distribution of functions between the national and county governments
- ▶ **Good governance in the education sector:** Article 10(1) of the Constitution states that the national values and principles of governance are binding on all State organs, Government officers, public officers and all persons whenever any of them.
- ▶ **Role of science and indigenous technologies:** Article 11(2) (b) and (c) of the Constitution recognizes the role of science and indigenous technologies in the development of the nation, and the promotion of intellectual property rights of the Kenyan people.
- ▶ **Educational infrastructure:** Articles 62, 63, 66 refer to public land which will be vested in and held by a county government in trust for the people resident in the county,
- ▶ **Creation of the Teachers Service Commission as a constitutional office:** Article 237 on the Teachers Service Commission accords special status to the TSC, i.e. an independent commission.

Basic Education Act (2013)

- ▶ The Basic Education Act (2013) is a culmination of efforts to align the education sector to the Constitution.

Principles of the Basic Education Act (2013)

- ▶ The provision of basic education is guided by the following values and principles. In sum they include:
 1. **Access:** The right of every child to free and compulsory basic education;
 2. **Equity:** Equitable access for the youth to basic education and equal access to education or institutions;
 3. **Quality and relevance:** Promotion of quality and relevant education and training schools to uphold standards of education including; encouraging independent and critical thinking; and cultivating skills, disciplines and capacities for reconstruction and development of the medium of instructions used in schools for all children of the same educational level
 4. **Good governance systems:** Accountability and democratic decision making within the institutions of basic education; promotion of good governance, participation and inclusiveness of parents, communities, private sector and other stakeholders in the development and management of basic education; transparency

5. **Child protection:** Protection of every child against discrimination within or by an education department or education institution on any ground whatsoever; protection of the right of every child in a public school promoting the respect for the right of the child's opinion in matters that affect the child;
6. **National values:** Promotion of national values such as peace, unity, respect, integration, cohesion, tolerance, and inclusion as an objective in the provision of basic education; elimination of hate speech and tribalism through instructions that promote the proper appreciation of ethnic diversity and culture in society; imparting relevant knowledge, skills, attitudes and values to learners to foster the spirit and sense of patriotism, nationhood, unity of purpose, togetherness, and respect;
7. **Innovation:** Promotion of innovativeness, inventiveness, creativity, technology transfer and an entrepreneurial culture;
8. **Non-discrimination:** Non-discrimination, encouragement and protection of the marginalised, persons with disabilities and those with special needs and other disadvantaged groups.

9. **Collaborative management:** Enhancement of co-operation, consultation and collaboration among the Cabinet Secretary, Teachers Service Commission, the National Education Board, the County Education Boards, the education and training institutions and other related stakeholders on matters related to education;
10. **Resource allocation:** Provision of appropriate human resource, funds, equipment, infrastructure and related resources that meet the needs of every child in basic education.

University Act (2012)

Objectives of university education in the University Act (2012)

1. Advancement of knowledge through teaching, scholarly research and scientific investigation;
2. Promotion of learning in the student body and society generally;
3. Promotion of cultural and social life of society; support and contribution to the realization of national economic and social development;
4. Promotion of the highest standards in, and quality of, teaching and research; education, training and retraining higher level professional, technical and management personnel;
5. Dissemination of the outcomes of the research conducted by the university to the general community;
6. Facilitation of life-long learning through provision of adult and continuing education;
7. Fostering of a capacity for independent critical thinking among its students;
8. Promotion of gender balance and equality of opportunity among students and employees;
9. Promotion of equalization for persons with disabilities, minorities and other marginalized groups.

Guiding principles in the University Act (2012)

1. Promote equalization for persons with disabilities, minorities and other marginalized groups.
2. Promote quality and relevance of its programmes;
3. Enhance equity and accessibility of its services;
4. Promote inclusive, efficient, effective and transparent governance systems and practices and maintenance of public trust;
5. Ensure sustainability and adoption of best practices in management and institutionalization of systems of checks and balances;
6. Promote private-public partnership in university education and development; and
7. Institutionalize non-discriminatory practices.

Technical Vocational Education and Training Act (2013)

Objectives of the TVET Act

1. Establishment of a technical and vocational education and training system;
2. To provide for the governance and management of institutions offering technical and vocational education and training;
3. To provide for coordinated assessment, examination and certification in technical and vocational training;
4. To institute a mechanism for promoting access and equity in training;
5. To assure standards, quality and relevance; and for connected purposes.

Guiding principles of the TVET Act:

1. Training shall be availed to all qualified Kenyans without discrimination;
2. There shall be instituted appropriate mechanisms to promote access, equity, quality and relevance in training to ensure adequate human capital for economic, social and political development;
3. Training programs shall take into account:
 - i. The educational, cultural and social economic background of the people;
 - ii. The technical and professional skills, knowledge and levels of qualification needed in the various sectors of the economy and the technological and structural changes to be expected;
 - iii. The trends towards integration of information and communication technologies to multiply access and improve training capacity, delivery modes and life-long employability of graduates;
 - iv. The employment opportunities, occupational standards and development prospects at the international, national, regional and local levels; and
 - v. The protection of the environment and the common heritage of the country.

National education policies

This section focuses on three themes, namely:

- ▶ policy evolution
- ▶ sessional papers
- ▶ policies in the education subsectors.

Policy evolution

Since independence, the Government has addressed challenges facing the education sector through Commissions, Committees and Taskforces.

1. **Report of the Kenya Education Commission (The Ominde Report, 1964):** This report sought to reform the education system inherited from the colonial government to make it more responsive to the needs of independent Kenya. The Commission proposed an education system that would foster national unity and the creation of sufficient human capital for national development. Sessional Paper No: 10 of 1965 on African Socialism and its Application to Planning in Kenya formally adopted the Ominde Report as a basis for post-independence educational development.
2. **Report of the National Committee on Educational Objectives and Policies (The Gachathi Report, 1976):** This report focused on redefining Kenya's educational policies and objectives, giving consideration to national unity, and economic, social and cultural aspirations of the people of Kenya. It resulted in Government support for 'Harambee' schools and also led to establishment of the National Centre for Early Childhood Education (NACECE) at the Kenya Institute of Curriculum Development (KICD).
3. **Report of the Presidential Working Party on the Second University in Kenya (The Mackay Report, 1981):** This report led to the removal of the Advanced Level (A-Level) of secondary education, and the expansion of other post -secondary training institutions. In addition to the establishment of Moi University, it also recommended the establishment of the 8:4:4 system of education and the Commission for Higher Education (CHE).

4. **Report of the Presidential Working Party on Education and Manpower Training for the Next Decade and Beyond (The Kamunge Report, 1988):** This report focused on improving education financing, quality and relevance. This was at a time when the Government scheme for the provision of instructional materials through the National Textbook Scheme was inefficient and therefore adversely affected the quality of teaching and learning. From the recommendations of the Working Party in 1988, the Government produced Sessional Paper No 6 on Education and Training for the Next Decade and Beyond. This led to the policy of cost sharing between government, parents and communities
5. **Report of the Commission of Inquiry into the Education System of Kenya (The Koech Report, 2000):** This report was mandated to recommend ways and means of enabling the education to facilitate national unity, mutual social responsibility, accelerated industrial and technological development, life-long learning, and adaptation in response to changing circumstances. The Koech Report recommended Totally Integrated Quality Education and Training (TIQET). While the Government did not adopt the Report due to the cost implications some recommendations, such as curriculum rationalisation have been adopted and implemented.

6. **Douglas Odhiambo report of 2012:** Task force on the re-alignment of the education sector to the new constitution recommended the change of the 8-4-4 curriculum to a new curriculum that:
- i. Ensure learners acquire competences and skills that will enable them to meet the human resource aspirations of Vision 2030 by offering a choice of subject pathways at the end of the Elementary School phase.
 - ii. Ensure the attainment of 100% transition rate from primary to secondary, thereby reducing wastage by introducing automatic progression to the junior secondary phase based on the acquisition of core skills and competences (literacy, numeracy and communication skills).
 - iii. Focus on early identification and nurturing of talent in individual learners at the end of the junior secondary phase. In so doing it provides flexibility and allows learners to pursue areas of specialist interest in their learning.
 - iv. Allow for specialization at the end of junior secondary.
 - v. Introduce a system of Competence Assessment Tests (CATS) measuring knowledge, skills and competences, the results of which will be cumulative and form part of a formative assessment process, the credits from which will be accumulated in the summative assessment at the end of each phase. This is distinct from the present situation where students either pass or fail and exit the system.
 - vi. Fit more naturally into the child's maturation cycle, especially for girls.

This report has seen the introduction of the competence based curriculum (CBC).

Sessional papers

The Sessional Paper No. 1 of 2005

- ▶ This is a policy framework that was developed to achieve Education For All (EFA) and the challenges of education, training and research in the 21st century (Republic of Kenya, 2005). The document articulates specific objectives and strategies of enhancing access, equity, quality and relevance at each level of education. The following are the targets of Sessional Paper No. 1 of 2005:
 1. Attainment of UPE by 2005 and EFA by 2015;
 2. Achievement of a transition rate of 70 percent from primary to secondary school level from the current rate of 47 percent, paying special attention to girls' education by 2008;
 3. Enhancement of access, equity and quality in primary and secondary education through capacity building for 45,000 education managers by 2005;
 4. Construction/renovation of physical facilities/equipment in public learning institutions in disadvantaged areas, particularly in Arid and Semi- Arid Lands (ASALs) and urban slums by 2008;
 5. Development of a national training strategy for TIVET in 2005, and ensuring that TIVET institutions are appropriately funded and equipped by 2008;
 6. Achievement of 50 percent improvement of levels of adult literacy by 2010;
 7. Expansion of public universities to have a capacity of at least 5,000 students each by 2015 and increase the proportion of all students studying science- related courses to 50 percent, with at least one third of these being women, by the year 2010.

9. **Mentoring, moulding and nurturing of national values:** Mainstream guidance and counselling; moulding; nurturing and mentoring in education and training institutions. This entails introducing mentoring and moulding programs in education institutions with a view to inculcating national values in order to promote national unity and cohesiveness.
10. **ICT integration:** Integrate ICT into the teaching and learning in our schools (ECD to Secondary) by training of trainers and building computer labs.
11. **Providing computers (laptops:** Laying greater emphasis on ICT integration to improve teaching and learning while continuing to support ICTs for educational administration and management (e-government) as well as development of digital literacy in support of knowledge economy.
12. **ICT infrastructure:** Invest in appropriate ICT infrastructure, systems and human capacity development across all county and sub-county offices to ensure results-based financing and real time information sharing; ensure that ICT will be incorporated in the education of children with special educational needs.
13. **Governance and management:** Governance and management establish the NEB whose role will be to advise the Cabinet Secretary on all matters concerning education in the country. Establish CEBs whose role will be to manage education at the County levels. Establish a system of tracking learners from pre-primary level through basic level of education.
14. **Teacher education and development:** Establish teacher education and development standards, based on acceptable principles that will ensure optimal delivery of competency based education for the benefit of the learners. Moreover, modernize pre-service and in-service teacher training and institutionalize continuous professional development.

15. Teacher management: Attain national equity in teacher distribution and utilization; enforce teacher registration as per Section 23 (2) of the TSC Act; maintain a 5-year stay policy' for all teachers on first appointment and for teachers in hard to reach areas maintain and review incentives periodically.
16. Planning, implementation, monitoring and evaluation: Rationalize basic education management systems and structures at national and county levels and institutionalize research in basic education to inform planning.
17. Financing, investment and resource mobilization: Promote increased private sector financing of education; strengthen internal and external partnerships and strengthen governance and accountability as well
18. Technical and Vocational Education and Training (TVET): Pursue TVET expansion programs at National, County and Constituency level to accelerate attaining GER of 20% in TVET by 2023; provide adequate training opportunities for accessible competency based training; rebrand TVET and establish TVET authority to regulate and assure quality.
19. University Education: Promote expansion to satisfy the demand for University places of the growing population; provide incentives and create an enabling environment for an increase in the number of private universities; expand Government student sponsorship to private universities; increase level of research funding available to universities and extend Government sponsorship to students in private

Sessional Paper NO. 1 of 2019

This is a Policy Framework for Reforming Education, Training and Research for Sustainable Development underscores the provision quality education for Kenya's sustainable development. The emphasis is on all levels of Education and Training with a focus on improvement of Education quality and relevance, access, equity, sector governance and accountability as well as social competencies and values. The objectives of this sessional paper are:

- I. To improve the quality and relevance while increasing equitable access to education, training and research at all levels;
- II. to address the macroeconomic and social challenges hindering the transformation to a knowledge-based economy through the creation of technology platforms for enhanced productivity and growth;
- III. to set up globally competitive skills development programmes for youth employability and thus 15 contribute to national development goals by strengthening Technical and Vocational Skills Development (TVSD);
- IV. to establish, maintain and manage competent human resources in education, training and research;
- V. to strengthen data management systems to support evidence based decision making in education, research and training; (vi) to formulate, review and implement appropriate policies, legal as well as institutional frameworks for the sector; and
- VI. to integrate ICT in curriculum delivery and management in education and training.

Education sub-sector policies

1. Education Sector Policy on HIV and AIDS (2004): This policy acts as a guideline for effective prevention, care and support within the public sector where HIV and AIDS programmes are being implemented. The policy applies to learners, employees, managers, employers, and other providers of education and training in all public and private, formal and non-formal learning institutions at all levels of the education system in the Republic of Kenya. It also calls upon all to join in the fight against HIV and AIDS.
2. National Early Childhood Development (ECD) Policy Framework (2006): This framework provides a coordination mechanism and explicitly defines the role of parents, communities, various government ministries and departments, development partners and other stakeholders in the provision of ECD services. The service standard guideline has been developed as a separate document aimed at operationalizing the ECD policy framework.

3. Gender in Education Policy (2008): This provides a planning framework for gender-responsive education at all levels. It highlights key concerns in education including disparities, retention and transition rates, and persisting negative socio-cultural practices and attitudes. The policy formalizes the rights and responsibilities of all people involved directly or indirectly in the education sector, and are further expected to contribute to the elimination of disparities.
4. Technical, Industrial, Vocational and Entrepreneurship Training (TIVET) Strategy (2008): The national TIVET strategy addresses challenges that affect the TIVET system, detailing strategic components dealing with issues of enhancing access and equity in TIVET for all; increasing capacity for delivery; improving and sustaining relevance of skills; improving institutional corporate governance; developing a unified policy and legal framework; promoting effective application of ICTs; establishing and strengthening collaboration linkages; institutionalizing effective research and development; diversifying sources and increasing funding; and addressing cross-cutting issues.

5. National Special Needs Education Policy Framework (2009): This framework addresses some of the critical issues determining delivery of quality, relevant education to learners with special needs. Issues of equity and improvement of learning environment in all schools have been addressed. Implementation of the policy framework is expected to ensure that inclusive education becomes a reality and consequently improves the participation and involvement of people with special needs in national development.
6. Alternative Provision of Basic Education and Training Policy (2009): This policy provides guidelines necessary to streamline the development and management of alternative channels that provide education and training, recognizing that all children, youth and adults are entitled to basic quality education as a right. By providing guidelines to assist all eligible learners in accessing quality education, the country hopes to achieve the EFA, MDGs and other national targets.
7. National Policy Framework for Nomadic Education (2010): The overall goal of this framework is to enable Kenya's nomadic communities to access basic education and training. It is geared towards ensuring equitable access to education by children in nomadic areas, including disadvantaged and vulnerable groups. The policy is also expected to ensure that the quality of education provided in nomadic areas meets approved national standards.

8. National Adult and Continuing Education (ACE) Policy (2010): This policy provides guidelines for use by current and potential providers in ACE, in order to harmonize the diverse ACE provision by different stakeholders and facilitate coordination. The policy specifically sets the scope and guidelines within which implementers or providers will operate; acts as a reference point for partners in ACE; provides a framework to the Board of Adult Education(BAE) for coordination of ACE; and sets quality and service standards in the provision of ACE.
9. Science, Technology and Innovation Policy: This policy was initially (ST&I) known as the ‘science policy’ emphasizing the need to do ‘good science’. It then became known as the Science and Technology Policy, linking knowledge (science) to its application (technology). Later there was a move for a policy for ‘science and technology for development’, focusing on harnessing science and technology for national development. This gave rise to the concept of science for development (role of science and technology in implementing development) and development for science (measures to strengthen science and technology capacity). Today, the policy is known as the ‘science, technology and innovation’ policy, implying that science must translate into innovative technologies at the marketplace.

Other policies:

10. Peace Education;
11. Education for Sustainable Development
12. Sector Policy for Learners and Trainees with Disabilities
13. Policy on repetition and admission
14. Policy on school safety and health
15. Policy on holiday tuition

Conclusion

- ▶ In this unit we have looked legal and policy framework of education.
- ▶ We have looked at articles in the Constitution that address education. In addition, we have examined various laws, sessional papers and policies that address the practice of education in the country.
- ▶ We hope your understanding of the law will help you to ensure that all school practices are within the legal framework.