



Making homeschooling possible

Report on Kenya

United Nations Human Rights Council/ECOSOC

Submitted by HSLDA

About HSLDA

1. Home School Legal Defense Association (HSLDA) is a nonprofit advocacy organization with over 84,000 member families in the United States of America and around the world, including Kenya. HSLDA provides legal counsel and advice to member families on compliance with homeschool regulations, advocates for homeschool freedom with National and State Governments as well as greater recognition with inter and nongovernmental organizations and entities. HSLDA engages in litigation to protect the right to home education against infringement and to advance the principle of education freedom and family autonomy. For more information about home education please visit www.hsllda.org, www.ghex.world or contact the report author, HSLDA Senior Counsel Michael Donnelly at international@hsllda.org.

Home Education

2. SDG 4 is about quality education. Hundreds of millions of children all over the world are not in school and many of the reasons relate to inadequate infrastructure. Poor areas are unable to build schools, hire teachers, provide materials, or provide the most basic inputs

for institutional education. Home Education is a form of education whereby caregivers and family members (or extended family or neighbors) take on the responsibility to educate their children or the children in their care. At a time when more and more children are unable to take advantage of any education, state must not be excessively dogmatic or hostile to parents choosing alternative or different/non-institutional pedagogical approaches. This is especially true when the right of parents to decide how their children are educated is a fundamental human right.

3. Home Education is a right derived from numerous international treaties and declarations. Foremost among these is the Universal Declaration on Human Rights which enunciates that families are the fundamental group unit of society (UDHR 16.3) and that parents have a prior right to decide what kind of education their children shall receive (UDHR 26.3). The ICESCR and ICCPR impose binding international legal obligations on signatories but also provide a reference point for *jus cogens* concepts of human rights. Article 4.2 of the ICCPR assign non-derivability to the 18.4 right of parents to ensure that their children's education conforms to their religious or philosophical convictions. Article 13.3 and 13.4 of the ICESCR reaffirms this parental right and further acknowledges that private education is a right of both parents and children. UN Special Rapporteur on the Right of Education observed:

[I am] a strong advocate of public, free and compulsory education, [but] it should be noted that education may not be reduced to mere school attendance ... Distance learning methods and home schooling represent valid options which could be developed in certain circumstances, bearing in mind that parents have the right to choose the appropriate type of education for their children, as stipulated in article 13 of the International Covenant on Economic, Social and Cultural Rights. The promotion and development of a system of public, government-funded education should not entail the suppression of forms of education that do not require attendance at a school. (Muñoz, 2007)

4. Regrettably, there are numerous states, and even international human rights institutions, that fail to recognize the significance of the right of home education and the seriousness of failing to adequately respect and protect this right. States may not pick and choose which human rights they respect and protect. Even if a State recognizes some human rights, the fact that it is missing the mark in other areas must be pointed out. As the foundational sovereign power in the international system, states must always seek to ascertain areas of weakness in their human rights performance and undertake to improve when deficiencies are noted.

Homeschooling in Kenya

5. There are dozens of situations in Kenya today where families have sought to undertake home education but have been subjected to arbitrary, intrusive and harmful intrusions because of this. Parents have been arrested and jailed. Children have been removed from their homes and in one case documented herein, jailed overnight. Such intrusions can never be justified on account of a child not attending a state school and are receiving an education elsewhere.
6. Although education may be an important right for all people, the refusal of a parent to enroll a child in school in order that they may educate the child in another recognized way can never be a reason to violate the home, remove children, or jail parents. Kenyan authorities must either interpret their laws to allow for this right or to take action to introduce laws that specifically provide for the fulfillment of the right.
7. While there is no explicit law providing for regulations of homeschooling in Kenya, there are no laws prohibiting the practice. In the Constitution and Children Act of 2001, parents are recognized to have the right to provide education for their child. Kenya's Ministry of Education has been dogmatic about defining education as only occurring in a school setting. Officials have stated that homeschooling is illegal simply because it is not recognized by the Ministry of Education. The implementation of the Basic Education Act of 2013 resulted in changes that created an impression that homeschooling had somehow become illegal, even though it had been allowed under the previous act. Regardless of

whether home education is recognized in the explicit laws of a country, it is a right retained by the people of any and all countries and must be permitted.

8. For many Kenyan families, overcrowded public schools and expensive private schools make homeschooling an option for many. Some feel that overcrowding in public schools has reduced the quality of education. Parents report dissatisfaction with current standards. On average, the student-teacher ratio is 50 to 1, and in some cases 70 to 1 and 100 to 1 in public schools.
9. The Kenyan 8-4-4 education system is exam-centered, and some are concerned that this approach creates elitism in society. Because some students are eliminated at primary, secondary and post-secondary due to lack of space to accommodate all qualified students, the system forces students to focus on memorization of facts without questioning to pass exams instead of understanding, relating, reasoning and applying knowledge. Students are also overburdened with homework and negatively affected by pressure to make the grade, stifling their ability to reason. The result is that students do not have enough time to think and make knowledge functional, practical and relevant to their life and environment. Knowledge remains abstract, subjective and theoretical.
10. Some say that curriculum content of the 8-4-4 system does not match up to international standards of education. This makes parents concerned about their children being able to succeed in a global environment. Kenyan students are less exposed to the global structures of politics, economics, religion and their place in history. Without access to these areas, many parents fear that their country will not be able to overcome the poverty, disease, dependency, exploitation and under-utilization so many African nations experience.
11. Kenyans who homeschool have been persecuted. This should not be, and the UN HRC should take a clear position that home education is valid exercise of the rights guaranteed under the international human rights system. The following cases studies were provided to HSLDA from a Kenyan organization called East African Christian Home Educators.

Cases of Persecution of Homeschooling Families in Kenya

12. These cases are personally known to the author, who has knowledge of the details disclosed herein.

Were:

13. In 2019, the Were family were surprised at their home by five police officers. The police arrested the father and the children. The mother was ordered to present learning materials to the police. They were not informed of why they were arrested until Mrs. Were visited the police station later and were informed that they were arrested for failure to take their children to school. The three children were kept spent the night in the female cell unit without food. Mrs. Were was not allowed to serve them breakfast until 1:45pm in the afternoon.

14. Eventually four cases were filed before the court against the father and each child. Mr. Were was charged with infringement of the children right to education. The other three were against the father alleging neglect. In the cases regarding the children, the court ordered they be taken to a children's home. The children were returned to the parents to return home only upon the parent's agreement to enroll the children in the government school. Petitions have been filed with the Kenyan High Court related to these cases seeking justice.

Kuria:

15. Mr. Kuria is a widower with 3 children. His in-laws reported him for homeschooling and were granted custody and the children were taken away from him. He has contested the ruling and there is a pending hearing date. It has been reported that the in-law was motivated in part at least by seeking the pension that Mr. Kuria's late wife was due.

Gathogo:

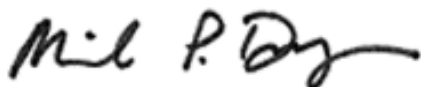
16. Mrs. Gathoga was reported to the children's officer by her brother alleging neglect because of her choice to homeschool her 2 daughters. Mrs. Gathoga was summoned to the officer's office and is pending a hearing date with the County Director of Education over the issue of homeschooling.

Conclusion

17. There are nearly 3 million homeschooled children in the world with over 65% of them in the United States. Homeschooling in the United States is fully recognized and many countries around the world are experiencing growth in this form of education. According to research, the reasons that parents choose home education include: a concern about the environment in other schools, a desire to provide religious or moral instruction, dissatisfaction with academic instruction in other schools, to address a particular issue such as a learning disability, giftedness, school bullying or other concerns. Kenyan families are turning to homeschool for these reasons as well.

18. Education is a human right as is the right of parents to choose the kind of education their children receive. Government run education is a recent historical phenomenon whereas parents have been educating their children for millennia. Technology advances continue to erode the sensibility of institutional education. Research on home education reveals that children who are homeschooled perform well academically and socially. Home education is not a danger to children or to the state. Rather, home education is a human right that offers a new pedagogical pathway to deliver quality education to children.

19. By failing to respect, protect and fulfill the right to home education, Kenya is failing to meet its human rights obligations.



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