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An Analysis of the extent to which the Kenya basic education Act (2013) provides for parental choice to homeschool: the primary and central role of parents as educators.

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The Kenya Basic Education Act (2013) and Role of Parents in Education

Thomas Mundia Gathure

31253

Master in Applied Philosophy and Ethics

2015

An Analysis of the extent to which the Kenya Basic Education Act (2013) provides for parental choice to homeschool: The primary and central role of parents as educators.

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31253

Submitted in partial fulfilment of the requirements for the Master in Applied Philosophy and Ethics at Strathmore University

School of Humanities and Social Sciences

Strathmore University

Nairobi, Kenya

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Date

## **Approval**

The thesis of Thomas Mundia Gathure (student no: 31253) was reviewed and approved by the following:

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## **Abstract**

Education in Kenya has witnessed a shift in ownership and management in the last 100 years. It has shifted from parents and community in the pre-colonial period to foreign missionaries and now to the State. While the State assumes a more primary and central role in the control of education, a new problem arises regarding choice and freedoms for other stakeholders. The recent enactment of the Kenya Basic Education Act, 2013 following the promulgation of the Constitution of Kenya, 2010 has presented one such scenario in the primary and central role of the State in education as compared to that of parents. The Act fails to recognise a legitimate and credible option of education - homeschooling - while at the same time criminalising the failure to take children to the prescribed schools in the Act. This raises questions as to the philosophical foundation underpinning the Act that could be contributing to this position. Due to the study's philosophical focus on understanding meanings and beliefs as well as the nature of the research questions, a qualitative research approach (a desk review supported by questionnaires and interviews) was selected. The research questions, measurable indicators and research findings were defined and interpreted in light of the philosophy of Jacques Maritain (an influential philosopher of education and participant of the drafting of the United Nations Universal Declaration on Human Rights). The research findings confirmed the effects of a limited philosophical foundation of the Act in its understanding of education, the place where education takes place, disproportionate roles vested on the State as compared to other stakeholders as well as the limited reflection of freedoms enshrined in the Constitution that support homeschooling. The study recommends a total overhaul of the philosophical foundation in which the Act is based to ensure any amendments are well guided and contextualised. Formulators of the Act could benefit from further study to understand the nature of homeschooling and ways to accommodate and support it for parents who choose it.

## **Key words**

Homeschooling, parental choice, philosophy of education, State control

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## **List of Abbreviations**

<b>BEA</b>	Basic Education Act, 2013
<b>BEAB</b>	Basic Education(Amendment) Bill 2014
<b>COK</b>	Constitution of Kenya, 2010
<b>CRC</b>	Convention on the Rights of the Child
<b>EACH</b>	East Africa Community of Homeschoolers
<b>HSLDA</b>	Home School Legal Defense Association
<b>ICESCR</b>	International Covenant on Economic, Social and Cultural Rights
<b>ICCPR</b>	International Covenant on Civil and Political Rights
<b>ICT</b>	Information and Communication Technology
<b>MDG</b>	Millennium Development Goals
<b>ODL</b>	Open and Distance Learning
<b>UK</b>	United Kingdom
<b>UN</b>	United Nations
<b>UNDHR</b>	United Nations Universal Declaration of Human Rights
<b>US</b>	United States of America

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## **Dedication**

To all the heroic homeschooling families of the Writers Club in Nairobi, Kenya.

In loving memory of my late father, Symon Gathure Mundia, who left me a deep seated love and desire to respect and promote the good of the family.

## **CHAPTER 1: INTRODUCTION**

### **1.1 Background to the Study**

This chapter sets the context in which the research problem arises. The background to the study presents the reader a sneak preview into the reason why the researcher has interest in the research study as well as the basis for the existence of a problem worth researching. This will mainly include historical background of education in Kenya, the highlights of the new Education Act as it pertains to homeschooling and the meaning and place of education. Other sections of the chapter will articulate the problem statement where the research problem is clearly stated, the research objectives and questions that will be the signposts that guide the direction of the study, scope and significance of the study that explains the relevance and limitations of the study. This chapter presents the reader with why this area needs to be researched and sets the foundation of a better understanding and following of chapter 2 (comparative analysis of what various authors have said about the research questions).

Education in Kenya has witnessed a shift in ownership and management in the last 100 years from parents and community in the pre-colonial period to foreign missionaries and now to the State. While the State assumes a more primary and central role in the control of education, a new problem arises regarding choice and freedoms for other stakeholders (Mumma, 2015). The recent enactment of the Kenya Basic Education Act (2013) following the promulgation of the Constitution of Kenya (2010) has presented one such scenario in the primary and central role of the State in education as compared to that of parents. The Act fails to recognise a legitimate and credible option of education, homeschooling, while at the same time criminalising the failure to take children to the prescribed schools in the Act, thus raising questions as to the philosophical foundation underpinning the Act that could be contributing to this situation (Kanjama, 2015). Kenya has witnessed a rapid enactment of laws following the promulgation of the Constitution in 2010. While developing countries are determined to implement their development promises and agendas, the likelihood of overlooking fundamental questions of meaning and values is high. Education in the developing world remains plagued by numerous challenges with priority being placed on enrolment through provision of free and compulsory education (Sifuna & Sawamura, 2010). Of concern is what we consider as education,

why we educate, what kind of legal framework encourages national unity while safeguarding freedoms of choice in education and the priority we place of recognising and supporting the natural role played by the family (fundamental unit of society) in education.

The Kenya Basic Education Act (2013) was a culmination of reports and bills that informed the provisions of the statute. The State in adhering to its Constitutional promise in Article 53 1(b) and 43 1(f) of the Constitution of Kenya 2010, which states free and compulsory education as a basic human and socio-economic right for every Kenyan child, sought to enact a new Education Law that was aligned to the new Constitution. Sources from the Ministry of Education, Science and Technology confirm the rationale behind the Act as a response to the high number of children not in school and perceived neglect and abuse of those that were meant to be in school. The new Education Act in Article 2 defines what a school is as well as what education is in its various forms. These definitions restrict themselves to institutions registered under the Act. Article 43 highlights the only two categories of school recognised (public and private), while Article 30 and 31 criminalises parental choices that do not adhere to those prescribed and recognised by the Act. Legal experts interviewed and formulators of the Act have confirmed that the Act neither recognises nor provides for homeschooling (Mumma, 2015).

Chapters thirteen and fourteen of the Kenya Task Force Report, 2012 on the realignment of the education sector to the Constitution that informed the new Education Act recognized the role of open and distant learning's facilitation of home education while noting the role of ICT in enabling learning at home (Task Force on Realignment of the Education Sector to the new Constitution, 2012). The Constitution of Kenya, 2010 in the Bill of Rights recognises the parental freedoms of conscience and religion exercised through teaching confirming the integral role parents play in infusing their value systems. The new Education Act differs with the recommendations from the Task Force Report that recognising schooling beyond conventional forms to include schooling at home.

Historically, in Kenya, parents and society at large participated in the education of their children before the coming of the missionaries and colonial masters (Kinuthia, 2009). The home was the setting in which education in all its forms took place.

Parents today have different levels of involvement in their children's education depending on the prevailing circumstances. Here in Kenya, and in other parts of the world, there are a growing number of parents that are returning to the old traditional model of education, before the advent of formal schooling, now popularly known as 'homeschooling' or 'home education'. The concept of children being taught at home is, therefore, not a new one. A few things are different between the homeschooling now and that of our great grandparents. The level of formal schooling of today's parent is higher, access to information has been radically changed by the advent of the internet and parents are more enlightened and involved in the character development of their children and influence over the content of their education (Ray, 2005).

Homeschooling or home education in modern context is an "elective practice whereby children are educated directly under the personal oversight of their parents, often though not exclusively by their parents and usually in a home setting" (East Africa Community of Homeschoolers, 2012). In other words what is taught at school is now taught at home. It entails parents (or tutors) responsible for both the planning and implementation of the instruction of their children including academic. It is undoubtedly a growing global social movement that has received mixed reactions in various parts of the World. However scientific research confirms its benefits and successes contrary to common fears about its limitations (Donnelly, 2012). Homeschooling is not only supported by Natural Law that affirms the inalienable right of parents as natural educators to choose and direct the education of their children but also by various international laws that provide for it. These include the United Nations Universal Declaration on Human Rights, Convention on the Rights of the Child, African Charter for the Welfare and Right of the Child, International Covenants on Economic, Social and Cultural Rights as well as the International Covenant on Civil and Political Rights (ibid, 2012). Proponents of this education option argue for the recognition and support for it as a legitimate and credible option to any parent who freely chooses it (Farris, 1997).

Education encompasses the whole person including intellectual, moral and spiritual aspects (Mimbi, 2007). It cannot, therefore, be narrowly perceived as happening in its entirety only in schools (Tooley, 2000). Parents are educators and the home is also a place where education takes place (Holy See, 1983). There is enough

scientific evidence to confirm that parents are capable of instructing their children just as well, if not better, than trained teachers and that homeschooled children are successful all round in their lives (ibid, 2005). “Parents are educators, and education in its deepest sense starts in the family (Sellés Dauder, 2010). Education has its root in a philosophy. A philosophy that answers the questions of where the world came from, the place and role of man in relation to the cosmos and characteristics of human nature consequently informs the nature and aim of education. This philosophy not only shed light on what education is in its fullest meaning but also the role and place of the State as compared to parents in educating children.

In conclusion, though the history of education in Kenya has witnessed great strides and advancements including increased enrolment, it still faces numerous challenges in quality and access (Sifuna & Sawamura, 2010). The new Education Act while seeking to align education to the Constitution of Kenya does not recognise homeschooling as an education option raising fundamental concerns regarding the philosophical foundations (meaning of education and primary role of parents) informing the Act, its recognition of education as not confined to schooling and the extent to which it reflects the freedoms of choice (conscience and religion) in education as enshrined in the Constitution of Kenya, 2010.

## **1.2 Problem Definition**

The recently enacted Kenya Basic Education Act (2013) does not recognise homeschooling as a legitimate and credible education option and further criminalises any parent that chooses it. The Act has done this by restricting what is considered as schools to institutions registered under the Act, confining education to formal schools as defined by the law, controlling curriculum choice, limiting the definition and understanding of teachers to exclude parents. Parents’ natural primary and central place as educators of their children is replaced by the State’s usurping of these duties, placing itself as the primary educator and relegating parents to a subsidiary and secondary role. Freedoms of choice, conscience and religion in education inalienably originating from Natural Law and enshrined in the Constitution are not adequately reflected in the new Education Act.

What is education in its deepest meaning? Does it form the basis of parental choice in education including homeschooling and encompass the home as a place where education takes place? What should be the role of the State as compared to that of parents in the education of children? Each of these questions forms the structure and flow of the argument and background of this study. The hypothesis was that the Act's treatment of parental choice and freedom is informed by its limited understanding of education and schooling, consequently, proscribing parents as primary educators and the home as a place where education takes place.

### **1.3 Research Objectives**

- i.* To find out the meaning of education in the Basic Education Act.
- ii.* To establish the extent to which parental choice to homeschool is provided for in the Education Act and the Constitution of Kenya (2010).
- iii.* To compare the roles and rights of the State and parents in the education of children according to the Education Act.
- iv.* To find out the reasons why parents in Kenya choose to homeschool.

Note: The Basic Education (Amendment) Bill, 2014 was added in the study to reflect an up-to-date status of any amendment to the Education Act in review.

### **1.4 Research Questions**

- (a)* What is the meaning of education in the Basic Education Act?
- (b)* To what extent is parental choice to homeschool provided for in the Education Act and the Constitution of Kenya (2010)?
- (c)* What are the roles and rights of the State as compared to those of parents in the education of children according to the Education Act?
- (d)* What are the reasons why parents in Kenya choose to homeschool?

### **1.5 Scope of the Study**

The research will be limited to analysis of:

- (a)* The Kenya Basic Education Act, 2013 and the Basic Education (Amendment) Bill, 2014.
- (b)* The Constitution of Kenya, 2010.
- (c)* Literature on Homeschooling.

The qualitative philosophical research presents the case for parental choice to homeschool by analysing the philosophical foundations of the new Education Act as regards meaning of education and role of parents in education. The study compares two legislations that is the Kenya Basic Education Act (2013) and the Constitution of Kenya (2010) in terms of the consistency of freedoms and rights in education while at the same time carrying out interviews and using questionnaires to correlate the desk review analysis and data collected.

### **1.6 Significance of the Study**

This study provided a first time evaluation of the recently enacted Education Act as regards the recognition of the extent to which the central and primary role of parents in education is recognised in the Act. It also provides a practical application of the role and significance of philosophy in evaluating and analysing a specific legislation and public policy in general. Homeschooling is an inevitable reality with us and a growing global phenomenon. This study analyses the extent to which the Act recognises, envisions and accommodates this education option.

Given the quick enactment of several legislations after the promulgation of the Constitution of Kenya, 2010, the study further highlights the extent to which the new legislations are aligned to the rights and freedoms in education enshrined in the Constitution. This study in no way seeks to attack the State or accuse it of omission or commission but to highlight a fundamental concept flaw in the philosophy behind the Act that is likely to present challenges in implementation and subsequent accommodation of amendments.

### **1.7 Limitation of Study**

The study limited itself to a desk (document) review and evaluation of existing legislations on the basis of a selected philosophical viewpoint; the philosophy of Jacques Maritain.

Qualitative research has been challenged to be prone to researcher subjectivity and thus the researcher's worldview has an influence on the study. The selected school of philosophy amongst many others is likely to be challenged but its justification is well captured in Chapter 2 under 'Jacques Maritain's Philosophy.

Use of unstructured questionnaires and Delphi interviews was a challenge especially when it came to getting information from education officials from the Ministry of Education reluctant to speak on behalf of the Ministry. The same challenge was faced with questionnaires for homeschoolers who had reservations due to the uncertain legal status of homeschooling. In addition, there is no available data on homeschoolers from the relevant Ministry.

## **CHAPTER 2: LITERATURE REVIEW**

### **2.1 Introduction**

The literature review revolves around the research questions (these form the subtitles) which are the fundamental questions used to evaluate the legislations. The researcher's comments on the views expressed by the various authors were included to direct the discussions in light of the theoretical framework informing the evaluation of the legislations in question. The literature review begins with an introduction to the philosophical viewpoint of Jacques Maritain's philosophy selected for the interpretation of the research findings. Each of the research questions are then explored in light of proponents and opponents of varying viewpoints. The researcher at the conclusion of each sub heading highlights knowledge gaps and areas of potential research that informs this study.

The argument at the heart of this study is that the meaning of education determines the understanding of who educates and where education takes place. This meaning of education which is informed by Natural Law sets the basis for parental rights in education including homeschooling. Simply put, every policy has a philosophy (way of thinking and interpreting reality) that informs it.

### **2.2 Jacques Maritain's Philosophy**

This section introduces the main school of philosophy selected by the researcher to provide guidance on the interpretation of the research findings. Jacques Maritain was a French philosopher of the twentieth century, an exponent of Thomism and an influential interpreter of the thoughts of Saint Thomas Aquinas. "Education aims at guiding man to becoming a human person with knowledge and skills that direct his moral and intellectual capabilities towards his ultimate end" (Maritain, 1943). Maritain's philosophy answers the key questions of where the cosmos came from, including man, and consequently whether the knowledge we get from nature and God (through our senses, rationality and faith) are all interconnected. His philosophy bases its understanding of education on the characteristics of the human nature we know from nature and as revealed to us by God. The human person is both body (matter) and spiritual soul (form) and has a free will and intellect (that is higher and governs his lower appetites, feelings and emotions). Man's goal and purpose is to find God: thus education is geared towards this ultimate source of fulfilment and

happiness. This philosophy is a synthesis of two great realists namely Aristotle (Ancient Greek philosopher) and Thomas Aquinas (medieval period influenced by Christianity).

Maritain argues that the human person is created good, with potential to do good, as long as the rational faculties of intellect and will are trained and formed through virtues and grace (Gutek, 2005). Though a proponent of inclusion of religion in education, Maritain believed that the truths expounded by the Catholic Church were natural, universal and objective truths and thus attractive to all. This is what made Maritain's philosophy of education relevant beyond the Catholic social doctrine on education.

Jacques Maritain participated in the drafting of the United Nations Universal Declaration on Human Rights (UNDHR). He is regarded as one of the greatest proponents of Natural Law as the basis of human rights (Maritain, 2001). Maritain's work in formulating a set of rights that emanate from the universality of the human nature forms the basis of my argument for the natural place and fundamental role parents play in directing the education of their children. Though Natural Law has been distorted and challenged in modern debates, the exposition of this law by Maritain remains sound and relevant in directing public policy matters that touch on fundamental natural rights and freedoms of choice. These rights cannot be conferred upon the person by the State. He believes that there are 'higher laws' beyond State control and intervention which include those of life as sacred, education of man, freedom of conscience.

Jacques Maritain was selected by the researcher because of his philosophy that unites all knowledge and its objective basis on immutable truths about the human person and human nature. Maritain distinguishes himself in his reliance on the tried and tested foundations of Aristotelian and Thomistic theories on the unity of the human person and knowledge as well as the transcendental dimension of all his actions (education linked to religion).

### **2.3 Theoretical Framework**

This section highlights the definition of the terms used in the research objectives and the specific measurable indicators under each objective as understood from the philosophy of Jacques Maritain. The researcher used these indicators to evaluate the

findings of the analysis of the Act and establish whether they met the objectives he set out to study. The study has a standard argument and hypothesis that is at the heart of the research, that is, the philosophical understanding of what education is, where it happens and who educates determines the extent to which parental choice and freedoms in education are recognised as well as the role of the State. Below are the research questions and the specific meanings that will guide the research findings and interpretation (discussions).

### **2.3.1 The meaning of education**

The meaning of education as expounded by the selected philosopher, Jacques Maritain includes the fact that education encompasses the whole person and its link to his happiness (intellectual, spiritual, psychological, physical). It has a religious character since its origin; content and ultimate end is God and thus cannot be neutral. Education contains value systems that are informed by religious convictions, it orders the intellect and will of the person to seek truth and desire what is good and fulfils the human person in his deepest yearnings (cognisant that he is a unity of material body and spiritual soul). Finally, it cannot be confined to schools. Schools are secondary to the family and only support and compliment the natural parental right and authority in the education of their children.

### **2.3.2 Parental choice to homeschool**

Parental choice to homeschool refers to the explicit recognition of parents as having the primary duty to choose and direct the education of their children including those not prescribed by the State, parental control of choice of education content including curriculum, recognition of parents as educators and teachers and the home as a school, recognition of parental rights as natural rights fundamental and inalienable and superior to the State. For Maritain, choice is a consequence of his understanding of the human person characterised by possession of a free will (freedom experienced only when governed by truth-about God, universe and Man).

### **2.3.3 Role of the State as compared to that of parents**

Maritain's political philosophy guides the question of the role of the State versus that of parents as educators. What we will be looking for is the extent to which the State plays a remedial and supportive role to parents (family), recognition of the central role of parents in education, establish who gives parents their duties and rights in education, comparative analysis of number of roles and duties assigned to

each and extent to which parent's religious values influence the education of their children. Laws enacted by the State are a reflection of Natural Law and consistent with divine/eternal Law (the law from God that governs all reality and orders it to their ultimate end). Parental rights and authority are prior to those of the State.

#### **2.3.4 Why parents in Kenya choose to homeschool**

This section seeks to establish whether the reasons are philosophical, religious, pedagogical, circumstantial or special needs driven. The reasons will also highlight the role that homeschooling parents think they play in the education of the children and whether all this is linked to the philosophical meaning of education running through the entire study. Maritain's meaning of education and his basis of rights on Natural Law will guide the interpretation and justifications parents give for choosing homeschooling.

This specific description of the variables under each objective is what will be used to structure research findings in Chapter 4, guide the discussions in Chapter 5 and subsequently assess the conclusions in Chapter 6.

### **2.4 Meaning of Education**

This section examines what various authors understand as education and subsequently who educates and where education takes place. The literature review also looks at the role schools play in education and whether education is the same as schooling.

Article 26.2 of the United Nations' Universal Declaration on Human Rights points out the aim of education as the 'full development of the human personality (UN General Assembly, 1948). It is worth noting that various authors' understanding of education is dependent on their metaphysical and anthropological views of human nature. Authors who do not recognise the existence of a spiritual soul in man and instead see man as matter or a machine, whose worth is determined by what they do and not what they are, have very different meanings assigned to education as compared to those whose understanding of human nature is Aristotelian and Thomistic (the human person as a composite union of body and spiritual soul). We begin with these authors.

The word 'education' is derived from the Latin word '*educere*' meaning 'to guide', 'to draw out', 'to lead out' and could also mean 'to develop innate abilities and expand horizons'. It is seen as a primary process of socialisation whose end is culture (Mimbi, 2007). He adds that, "Education includes all those experiences by which intelligence is developed, knowledge acquired and character formed. In a narrower sense, it is the work done by certain agencies and institutions, the home and the school, for the express purpose of training immature minds. The parent and the teacher are the artists in this process" (ibid, 2007).

Education can also be seen as the process by which knowledge, skills, values, beliefs and habits are transferred from one generation to another. It is thus a medium for transmitting culture. Education is, therefore, inescapably religious in so far as its aims are connected to man's ultimate end - it cannot be neutral (Klicka, 1995). It encompasses one's entire life and thus fundamentally shapes one's mind and worldview. Thus, education is a means by which the human person learns to be human. It is guided by a sound understanding of the human nature and consequently how one can live according to this nature to find true fulfilment (Maritain, 1943). Education cannot be considered while disregarding the end of man. Therefore, there is no value free or secular education according to Maritain since religion forms the values espoused in education. Philosophers such as Maritain believe in the existence of absolute truths that transcend time and form the basis of knowledge of all realities. This is different from what John Dewey believed. We shall look at some comparisons of these two philosophers that have had a profound impact on education.

John Dewey is considered as one of the greatest influencers of modern day education. According to him, there are no absolute truths; the student directs his life and search for knowledge and as a result morality and truths are subjective and relative. Dewey believes that education is progressive, that involves the freedom of the individual to discover their truths (Gutek, 2005).

Maritain on the other hand indicates that "human beings, by their very nature, possess a potentiality to know and an inclination to find the truth. This potentiality is enhanced when the individual is brought into contact with the collective experience of the human race through the transmission of the cultural heritage. Education's

primary purpose is to bring each generation in contact with truth by exercising and cultivating the intelligence and rationality each person possesses. All lesser goals must conform to that purpose” (Gutek, 2005). The education of man cannot be delinked from the religious and metaphysical truths about the being of man: the need to discover truth and so be truly free, a truth that can only be found in God, the source of contemplation (Maritain, 1962). He further states that, “Education directed toward wisdom and centred on the humanities aiming to develop in people the capacity to think correctly and to enjoy truth and beauty, is education for freedom or liberal education” (ibid, 1962).

The comparison above serves to confirm the influence of anthropological and philosophical foundations on the understanding of education. Depending on the views one holds regarding ideas (form) and reality (matter) or the characteristics of the human nature and its relation to God, all these serve to influence what one understands as the aim of education, the nature of the learner and appropriate content in education.

Modern attempts to restrict education to the confines of schools, following the French revolution and political philosophy of John Locke and Thomas Hobbes, are the basis for those who propose State control of education within its prescribed schools. Plato, in Ancient Greece, believed that the State was the only one mandated to educate the citizens and the family had no role whatsoever (Frost Jr, 1942).

Accordingly, education as defined by Maritain is not the same as schooling and so encompasses other places such as the home. “The more one loves, the more one educates. Only he who loves educates in and for freedom” (Sellés Dauder, 2010). “In education, then, there is a confluence of that which is from within (natural endowments) and that which is from without (the artist’s skill, the environment). Hence, without love and dialogue, it is not possible to educate” (Mimbi, 2007). The home is naturally the place the human person is accepted for who he or she is, first encounters love and enters into the first community (John Paul II, 1981). “The deepest human problems are irrevocably linked to the family, the first and irreplaceable human community, and the vital cell of the whole human society. It is within the family where men and women acquire their basic knowledge, begin to develop their personality and prepare themselves for the mission which will be

eventually entrusted to them. Thus, the enormous importance of the parents' role, in fatherhood and motherhood and as educators does not end with the birth of the child" (Abad & Fenoy, 1995).

"Since parents have given children their life, they are bound by the most serious obligation to educate their offspring and must, therefore, be recognized as the primary and principal educators. This role in education is so important that only with difficulty can it be supplied where it is lacking. Parents are the ones to create a family atmosphere animated by love and respect for God and man, in which the well-rounded personal and social education of children is fostered. Hence the family is the first school of the social virtues that every society needs" (Paul VI, 1965). The Catholic Church's position on the family is greatly influenced by the philosophy of Aquinas, hence, it is not surprising that based on Natural Law it would assert the central role of the home and parents as educators.

Opponents of this position argue that modern families have evolved and there is need to acknowledge the fact that many parents are not well predisposed to educate their children. The reasons for this could be the low schooling standards of the parents, the demands of modern careers on their availability and the opportunity schools offer for socialisation as opposed to the confines of a home. However, these views are influenced by a narrow view of education and the replacement of the natural roles of the family by subsidiary institutions such as the State and schools. Education is always happening in the home and though unstructured, it is the place where habits are formed and culture is transmitted. A distorted understanding of education renders the home and parents by extension as passive stakeholders and spectators in the development of their children. A deeper sense of the meaning of education, as we saw earlier, confirms the natural and fundamental role played by any parent (regardless of their education standard) in educating in freedom and love (Abad & Fenoy, 1995).

During the Ancient Greek period, schools were the preserve of the State and were used to shape the minds of the citizens for the roles stipulated by the State. During the medieval period, schools became the preserve of the Church (mostly the Catholic Church) where philosophy and theology were mainly taught as foundational subjects for all other sciences. The meaning and role of the school was

greatly redefined by the Enlightenment period which saw the attempts to separate State from Church and remove philosophical teachings founded on theological dogmas from the schools. These secular schools would therefore be placed in the hands of private individuals or the State especially in the case of public schools. Contemporary philosophical period would see an era of 'confusion' and a desire to create an autonomous individual who defines what is moral. Educational content and purpose would be subjective and a new modern welfare State would seek to equalize and control education. This historical context gives one an idea of the challenge that the meaning of school faces today. As we review what different authors say about schools, it is important to bear in mind the philosophy that is influencing their way of thinking.

The Greek word for 'leisure' is the Latin word '*scola*', German '*schule*', English '*school*'. "The name for the institutions of education and learning mean leisure" (Pieper, 2009). Pieper laments at the modern loss of the original meaning of leisure for the "leisure-less culture of total work" (Pieper, 2009). He says that 'leisure' denotes contemplation of higher things - the world outside the physical world as we see it. Schooling is synonymous with the place where one discovers truth about self, cosmos and God. It is not about acquiring knowledge and skills for the practical world but more so as a place where one discovers truth, goodness and beauty. Schooling, therefore, is the place where man discovers this end and cultivates his rational faculties to guide him towards that end (Maritain, 1943).

This is quite a contrast to the modern concept of formal schooling that is all about mass production of individuals who are then subjected to standardised tests and ranking to determine their worth (Robinson, 2010). He adds that schools were used by the State as a tool to engineer social behaviour and train citizens uniformly to meet economic and political ends (ibid, 2010).

A different dimension to the concept of school is worth noting. Schooling improves to the extent the family improves. Its main task is not to replace the family but reinforce and empower it. "The family is the root and end of the school, which exists in function of the family, not the other way round" (Sellés Dauder, 2010). Schools play a complimentary (not substitute) role to the family which is the first and primary place of education (Hahn, 1996).

In conclusion, the meaning assigned to schools depends largely on the meaning of education grounded in a philosophy that defines the role and place of man, nature and God. The extent to which philosophy has influenced education and policy in general is an area that can be explored further. The influences of the philosophy of the colonial masters in shaping and directing the meaning and aim of education are worth further interrogation.

## **2.5 Parental Choice to Homeschool**

This section limits itself to the foundations of freedoms in education and their justification of parental choice to homeschool. Proponents of Natural Law as a basis of human rights such as Jacques Maritain ascribe parental rights to educate as natural, fundamental and inalienable. These truths are known through reason and nature. Opponents of this choice and rights of parents stem from a modern concept of philosophy in Law known as ‘Positivism’. These authors argue that what is right and true is determined by the legitimate authority and popular consensus. These authors argue that rights can change and truths are subjective, thus denying the existence of any immutable truths found in nature, reason and faith. We counter this argument with sources of law that have supported freedom of choice in education including homeschooling.

International law provides us some insights into the place of parents and the home in the upbringing of children. Article 16.3 of the UNDHR states that: “The family is the natural and fundamental group unit of society and is entitled to protection by society and the State” (UN General Assembly, 1948). Article 26.3 of the same document states that “parents have a prior right to choose the kind of education that shall be given to their children” (UN General Assembly, 1948). The family as the fundamental unit of society (UN General Assembly, 1948) that deserves recognition since the parents have rights to choose and direct the education of their children including choosing schools not prescribed by the State (UN General Assembly, 1976). Parents have the prior right to the education of their children while recognising the home as a place where education takes place (African Member States of the Organization of African Unity, 1999).

Parents have the right to choose and direct the education of their children including to home school (Holy See, 2012). Parents are the natural first and primary educators

of their children and thus have to be concerned not only about the bodily needs of their children but the eternal destination of their souls (Holy See, 1983). Article 5(a) to (e) of the Charter of the Rights of the Family indicates that parental rights extend beyond choosing and directing of education to encompass the choice of education informed by their moral and religious convictions. Parents have a right to be supported by the State regardless of the choice of schools they make. Their rights include the option to remove their children from schools that teach contrary to their religious convictions. Compulsory education that is devoid of any religious formation goes against the rights in the charter (Holy See, 1983).

“Parents, who have the primary and inalienable right and duty to educate their children, must enjoy true liberty in their choice of schools. Consequently, the public power, which has the obligation to protect and defend the rights of citizens, must see to it, in its concern for distributive justice, that public subsidies are paid out in such a way that parents are truly free to choose, according to their conscience, the schools they want for their children” (Paul VI, 1965). A parent is within Natural Law to determine the kind of schools and education their child gets (Klicka, 2002). Proponents of homeschooling have based their right to choose this education option on the natural place of the family and inalienable rights prior to the State.

The Ancient Greek philosopher Plato in his ‘allegory of the cave’ provides us with a good example of what idealists considered as the aim and meaning of education. For him and many idealists the human person is created with ideas (forms) but these are limited; the prisoners for whom reality is what they see in shadows until someone takes them out of the cave to the light. Plato believed that education aimed to enlighten the people, a task that was a preserve of the State and not the family (Anderson, 2001). Modern philosophers such as Immanuel Kant and René Descartes sought to create truth and basis of human rights as relative and subjective (Frost Jr, 1942). Positivism and the philosophical foundation in rationalism (reason alone) and empiricism (observation) rendered it difficult to ascertain what is right or wrong leaving truth to the subjective verdict of the powerful often with disastrous consequences as witnessed with the Nazi Regime (Benedict XVI, 2011).

Kenya’s education is influenced by a philosophy. This study seeks to find out what that philosophy is and to what extent it influences the understanding of education

and the role of parents in educating their children. This philosophy highlights who has the primary duty of providing education and to what extent there is freedom to determine the education one seeks for their child. Where parents have no first and primary role in education, then questions need to be asked as to what informs this position and what effects, if any, will this have on social order and harmony.

## **2.6 Role of the State in Education**

Political philosophy has taken various shapes depending on the philosophical views on the source of the authority of the State. Autonomous modern welfare States that get their mandate from the electorate are a concept that has emanated from the thinking of the Age of Enlightenment period in the eighteenth century. This period saw the creation of States that sought to reject the role and authority of the Church in temporal and secular matters. Authors influenced by philosophers from the Age of Enlightenment such as Jean-Jacques Rousseau, Thomas Hobbes and John Locke view the supremacy of the State over the individual and consequently the primary role of the State in education over subordinate units such as the family. Post Enlightenment has seen the deliberate alienation of theology and philosophy in politics (Frost Jr, 1942).

Opponents of these views regard the State as answerable to a 'higher being' and subsequently any laws it makes have to be consistent with natural and divine Law. Politics is at the service of the common good and recognises the integral role of its individual members, especially the natural and inalienable role of the family. We will begin by looking at the ideas of these authors.

The State has a duty to support and recognise the role of civil society, for instance, the family, as a partner in education as expressed by the principle of subsidiarity. The principle of subsidiarity, as set out by Aristotle and taught by the Catholic Church, is based on a particular view of the human person and places the State as an artificial institution that is accidental and not substantial in relation to the individual. The principle that has been adopted by the European Parliament broadly concerns itself with the rights and duty of the public authority to intervene in social and economic affairs of individuals and groups (Carozza, 2003). Point 1883 of the Catechism of the Catholic Church says that "a community of a higher order should not interfere in the internal life of a community of a lower order, depriving the latter

of its functions, but rather should support it in case of need and help to co-ordinate its activity with the activities of the rest of society, always with a view to the common good". Simply put the principle recognizes that there are tasks that can be undertaken by the primary and smaller natural institutions such as the family, and that the State should not usurp their natural rights and responsibilities. Homeschooling experts confirm that this qualifies the challenge that modern welfare States face due to their makeup and disposition. They claim that "while the principle of government concern about social welfare may be generally unchallenged, there are strong objections from various quarters to government itself providing a full range of services" (Glenn, 2000). These concerns stem from the overarching role of the State and intrusion into rights that are the preserve of civil society including the family.

Modern welfare States seek to intrude into the personal and family rights in education instead of maintaining a healthy relationship with natural institutions such as the family (Glenn, 2000). Schooling remains the State's medium for controlling the masses. Free and compulsory education makes the Government a significant service provider of education and with obvious vested interests (Glenn, 2000). The creation of the welfare state as envisioned by the Enlightenment philosophers such as Thomas Hobbes and John Locke in the 16<sup>th</sup> and 17<sup>th</sup> century vests the rights of the citizens on a supreme authority, the State. Over the years, the State has seen it incumbent upon itself to control education as part of its mandate of safeguarding the interests of all citizens in its attempts to provide equality in education (West, 1994). There is, however, no evidence to show the success of increased State control and management of education leading to more success in education such as literacy rates (Tooley, 2000).

Parental duty to educate is a higher and unique role beyond bringing forth children and distinguishes them from animals. Education cannot be distanced from transmission of values, beliefs and habits which stem from the parent's convictions and religious beliefs (Mumma, 2015). The love they have for their children qualifies them as the best suited tutors for their children where they choose to be involved wholly in the learning experience of the child (Klicka, 2002). Authors that do not see it this way are inclined to relegate the role of parents to simply taking their children to school. Those who prescribe a more primary and central role for parents

see in them not only the duty to merely choose the education best suitable for their children but also play a central and leading role in the directing of that education. This involvement could take various forms such as establishing parent-led schools, involvement in parent associations, hiring and managing of teachers, control over curriculum and schooling the children at home.

According to contemporary education experts, such as James Tooley and E.G. West, who oppose centralised State systems and instead advocate for the role of the family, “schooling is part of the institutional mechanisms that the State has either created or set in stone, for the purposes which may or may not relate to education as we understand it in other ways. Schools have had their purpose for other ends such as social control or surveillance” (Tooley, 2000). The State cannot be seen as the solution to the problems in education but instead as a facilitator and enabler of an environment that allows other stakeholders such as private individuals, companies and families to play their integral role (Glenn, 2000). Radical steps are proposed by educational experts such as Tooley and West in reclaiming education. These include private management of State schools as well as introduction of vouchers that are government funded to allow parents to choose their preferred school addressing the equity challenge in education (West et al, 2003). State control of education - especially of the definition, control and management of schools - is informed by a certain political philosophical viewpoint. The State is seen as the only guarantor of standardized and equalized education for all (Glenn, 2000).

Schools are thus seen as the means by which the State can ensure this equality by the provision of free and compulsory education. Schools serve to ensure that the State is able to influence the minds and hearts of its citizens by the control of the content in education either as monopoly developers or as approval or accreditation providers. Private entities and religious bodies remain key players in education since most governments, especially in the developing world; do not have the capacity to meet all the education needs of the people. How far can the State go in controlling, prescribing and managing schools? When does the State infringe on private and individual rights while carrying out this mandate? Is equality in education a reality or a cover up for the State to monopolize this essential service? Kenya’s Basic Education Act provides an example of a fundamentally flawed philosophical

foundation that informs the spirit of the Act and consequently fails to recognise the primary role and place of parents and the home in education (Kanjama, 2015).

The dividing point lies in what role one subscribes to the State and the relation between the individual and the community. The tension that exists between individual rights and the common good are a consequence of modern philosophical thoughts following the methodical doubt wave started by René Descartes (Gilson, 2011).

## **2.7 The Case for Homeschooling in Kenya**

This section begins with an overview of homeschooling globally before looking at the situation in Kenya. Global information on homeschooling is dependent on the legal status of this form of education. This section seeks to understand the reasons why parents or guardians opt to homeschool and whether these reasons are connected to the meaning of education as highlighted above.

Homeschooling has seen a resurgence since the 1970s, especially in the United States of America that has, according to the latest statistics, almost 2.2 million homeschooled children (Ray, 2005). Studies from the US indicate that parents choose to homeschool their children for various reasons, such as a desire to instil religious values absent in private or public schools, declining moral standards in schools, desire to maintain family unity normally disrupted by conventional school life, control education content in line with their convictions and worldview, special needs children and a growing negative peer influence at early ages (ibid, 2005).

Governments in certain parts of the world have rejected homeschooling as a parallel society that goes against the State's desire to create open and pluralistic societies (Farris, 2012). Open society is usually a term used to show all inclusiveness and tolerance for differing opinions and beliefs. Homeschooling experts indicate that 'popular schooling is the instrument that an activist government is most tempted to employ to bring about social transformation and that, having started to use it, is most likely to use it even more deliberately and extensively' (Glenn, 2002).

The growth of homeschooling is as a result of a silent revolution stemming from a dissatisfaction and disillusionment by parents of the quality and direction of education. It is not a coincidence that as moral values become relative and

subjective, coupled by a growing rejection of God in public life, parents are seeking alternative forms of education in line with their religious convictions. The advent of the internet has made information readily available and is undoubtedly shaping the way people are being educated. As more and more educational material from top universities and other institutions becomes accessible to many, the concept of classless schooling is becoming a reality (Andrade, 2008). Universities are already providing their content through these new platforms via tablets and e-learning programmes. Information and communication is faster, reliable and readily accessible through mobile telephony creating an environment very different from that of our forefathers. Parents today have more resources, than their predecessors, that include wider choice of curricula, access to online tutors, discussion forums and support groups across the globe.

Critics of homeschooling attack it for its supposed utopian approach to reality, closure of the children to the real world, exposure to dangerous antisocial ideologies by radical parents, inability to prepare children for academic excellence, elitism, creation of parallel societies that endanger the common good and the limited capacity of parents to teach. Homeschoolers seek to direct the education of their children due to the growing influences of modern philosophies that are founded on atheism and materialism (Klicka, 1995). Let us revisit the earlier stated criticisms of homeschooling.

Homeschooling has been accused of being antisocial in its denial of the opportunity for the children to mix with other children. This argument for socialisation is one of the biggest criticisms of homeschooling. The argument assumes that socialisation only takes place in schools. However the definition of 'socialisation' is questionable since for many it is synonymous with conformity. Any child can turn out antisocial whether after homeschooling or formal schools (Romanowski, 2006). Homeschoolers are aware of this danger and ensure that beyond the home environment, their children get to interact with other children through various extracurricular activities with formal school going children. Nevertheless, it is important to note that true socialisation starts within the family context from the contact with the parents and siblings (where applicable). Numerous researches confirm that contrary to popular belief homeschooled children are better socially, have strong ties with adults (beginning with their parents) and make very patriotic

and good citizens (Farris, 1997). The question of whether education should be for the good of the individual or the society(group) has been a distinguishing feature of different philosophical schools (Frost Jr, 1942). Proponents of progressivism and pragmatism such as Jean-Jacques Rousseau and John Dewey, focus on the individual as the prime focus while their Christian opponents, such as Jacques Maritain, see education as a bridge between the individual and society (Gutek, 2005).

Man is a social animal and thus has a nature that is imperfect and by contact with other human beings perfects that nature (Maritain, 1943). The socialisation implied by philosophers does not relegate the individual to conformism but instead acknowledges that in discovering and developing self, the human person naturally seeks the good of another. Socialisation that implies conformity at the expense of true freedom of the human person is degrading. States that deny the right to homeschool, in the name of protecting the nation from ‘parallel societies’, overlook the bigger picture on respect for human freedom in its diversities (Glenn, 2012).

Another argument is based on the public nature of education and thus homeschooling provides an unfavourable private alternative to it. At the heart of this debate is the relation between the individual and the community and which one of the two is deemed as superior. The philosophy of the post Enlightenment period presented a major rift in the relation between individual and State (collectivism) seen in the different extremes taken to support either side (Gilson, 2011). Furthermore, opponents of homeschooling argue that homeschooling removes children from a common educational experience to the detriment of what is good to all. Homeschooling is simply a reaction to a perceived failure of public education and denies these schools the input and insights of those concerned parents that opt to remove their children from them. This includes the elevation of private goods over the public good(Lubienski, 2000). Studies show that despite State intervention and compulsory education, literacy levels in countries such as the United Kingdom (UK) and United States of America (USA) have dropped compared to those before the introduction of mandatory school attendance laws in the early 19<sup>th</sup> century (West, Tooley, Stanfield& Institute of Economic Affairs, Great Britain, 2003). There is also no proof on the secluded nature of homeschooled children who instead exhibit patriotism and social skills adjusted to all types of people (Ray, 2005).

Elitism is another argument posed against homeschoolers. Parents who choose to homeschool are accused of considering themselves better by their accusation of the failing of conventional education systems. Although it is a fact that many homeschooling parents choose to educate their children primarily to restore God-centred moral values and bring unity to the family, this in no way makes them elitist but simply persons left with no option. Have moral values in schools changed? Is there cause for alarm at what is taught in schools today? Schools, following the Enlightenment period of the 18<sup>th</sup> century, are greatly influenced by humanism: a philosophical viewpoint that rejects the role of God as source of objective moral truths and values and instead introduces subjective sources based on individual human preferences (Klicka, 2002).

Homeschooling has also been challenged with regard to the parents' ability to teach technical subjects and also prepare the children for entry into higher learning institutions. This argument is once again based on the narrow notion of what teaching is and the prejudiced view that only recognises trained teachers as capable of instructing. There is no scientific proof that correlates academic excellence to the input of trained teachers. Research shows us a different picture in terms of the academic excellence and preparedness of homeschooled children including those who have opted for entry into university (Romanowsky, 2006).

The reality in our education sector is that private and public schools do not have the capacity to meet the needs of all children in the community (Romanowski, 2006). The inadequate infrastructure, dwindling standards of education, strained teacher resource as well as the challenges posed by standardised schooling and examination are realities that require a re-evaluation of our education as a country. Parents are accorded the freedom and right to educate their children according to their religious beliefs and convictions as long as this does no harm to the child or poses a danger to the community. Homeschooling parents are God fearing, law abiding citizens that love their children and want the best for them (Glenn, 2012). Don't they have a right to choose a form of education that is in line with their convictions since they are the ones that brought these children to life?

Information and communication technology (ICT) is changing the way we look at education. Classless education is now becoming a reality and once again a

confirmation of the need to rethink the place of education (Andrade, 2008). The Task Force Report that informed the new education Act explicitly recognised the role that ICT plays in providing open and distant learning and consequently the place for home learning (Task Force on Realignment of the Education Sector to the New Constitution, 2012). Some of the best Universities in the world are now offering their content on line through platforms such as e-learning, tablets uploaded with the learning content and online courses (Andrade, 2008).

There is no doubt that there is no perfect education system. Homeschooling, like formal schooling, if not well executed, managed and regulated would exhibit the same challenges that are criticised in public schooling. Homeschooling a child has no guarantee of producing a well balanced and responsible person. The tendency to have a complex against other forms of education and to transmit biased moral and religious convictions is still possible in homeschooling. Government concerns over the interests of children in cases of abusive parents who are homeschooling are also legitimate though legal experts argue that these are the only exceptions where the State should step in to usurp the natural roles of parents as educators (Kanjama, 2015).

Though the number of homeschooling families in Kenya comprises a very small percentage of school going children, it is a growing population that cannot be ignored. Current unconfirmed estimates according to the Home School Legal Defense Association (HSLDA) indicate that around 500 families in Kenya are homeschooling. There is need to find out what factors are influencing parents to choose this form of education so as to guide policy accordingly. More research needs to be done regarding the best models of recognition and support of homeschooling.

Homeschooling is no longer an option one can dismiss and it remains a reality here with us since there is no way one can have a one-size-fit-all education and schooling system. Homeschooling reflects the diverse needs and convictions of human beings to educate their children and future generations. It also reflects the growing reality of the limitations of conventional forms of education and justification for freedoms of choice accessible to willing parents.

## 2.8 Conclusion

Philosophy is the mother science from which all other sciences emanate and find their meaning (Weaver, 2012). Philosophical truths about reality, being, morality, nature of the universe, human nature influence the content and aim of education. The last four centuries have seen an emergence of a philosophy that seeks to deviate from the traditional truths about man, the universe, the State and education (Frost Jr, 1942). Modern philosophy has been at great pains to separate itself from theology and the metaphysics of ancient and medieval periods (mainly Christian). Some 20<sup>th</sup> century thoughts on the relationship between philosophy and education state, “now it is obvious that the purely scientific idea of man can provide us with invaluable and ever-growing information concerning the means and tools of education, but by itself it can neither primarily found nor primarily guide education, for education needs primarily to know what man is, what is the nature of man and the scale of values it essentially involves” (Maritain, 1943). Maritain offers us further insights into the crisis in education when he asserts that ‘the purely scientific idea of man, because it ignores “being-as-such”, does not know such things, but only emerges from the human being in the realm of sense observation and measurement’ (Maritain, 1943).

The research study objectives were to find out the meaning of education in the Act, determine the extent to which parental right to homeschool is provided for in the Constitution of Kenya and the Education Act, compare the roles and rights of the State in education and those of parents and lastly to find out the reasons why parents choose to homeschool. The Literature review presented the context in which to establish what was being measured by this study in order to arrive at a conclusion. The review confirms the correlation between the meaning of education and the subsequent recognition of parents as educators, the home as a place where education takes place and the evidence that supports the legitimacy of homeschooling as an education option within the right of any parent that opts for it. The philosophy of Jacques Maritain provides the lens through which the research will be analysed and evaluated as regards the research objectives. The research methodology that is determined by the objectives stated will now be explained in the next chapter.

## **CHAPTER 3: RESEARCH METHODOLOGY**

### **3.1 Introduction**

To research means to look for, examine, investigate or explore (Kombo & Tromp, 2006). This was a qualitative philosophical research to examine and look for a correlation in meaning and expression in legislations while seeking a deeper understanding of the underlying causes of this correlation. This research method was selected due to its ability to study meaning, behaviour and attitudes thus going beyond statistical results (Mugenda & Mugenda, 2003). Research seeks to provide new knowledge by critically examining and inquiring existing conclusions and theories with the aim of providing solutions (Kombo & Tromp, 2006).

### **3.2 Research Design**

Research design refers to the structure of the research and the plan that outlines how the research questions will be answered (Kombo & Tromp, 2006). The nature of the research questions defines the research design.

The research questions are (1) to find out the meaning of education in the Basic Education Act, (2) determine the extent to which parental choice to homeschool is provided in both the Constitution of Kenya and the Basic Education Act, (3) what are the roles of the State as compared to parents in the Basic Education Act and, (4) why do parents in Kenya choose to homeschool. The research questions are primarily document review-based thus this type of secondary research forms the major part of the research methodology. To support this qualitative research method, questionnaires and interviews were included as research instruments but limited to mostly the fourth research question and, in a small scale, in support of opinions emanating from the document review. Due to the legal interpretations required, the study selected a sample size reflective of respondents conversant with the journey towards the enactment of the Act under review. Interviews and questionnaires were to give credence and objectivity to the document review of the legislation by the researcher.

Data collected from both the document review and primary research were then correlated according to the research questions and subsequent theme clusters. All this analysis material was then interpreted according to the meaning assigned by the

selected philosopher to the research question variables. The research findings were evaluated in terms of the extent they answer the research questions.

### **3.3 Population of Study**

“A population is a group of individuals, objects or items from which samples are taken for measurement” (Kombo & Tromp, 2006). The population is defined by the scope of the research, which in this case limited to legal interpretations of legislations as well as first hand information from homeschooling parents regarding the reasons why they homeschool. Though the qualitative research relied on secondary sources the researcher included a limited primary research component informed by the nature of the research questions and with the sole purpose of injecting objectivity in the study in cases where fundamental viewpoints were being expressed regarding meanings and interpretations.

As a result of this the population for this study was made up of legal experts, formulators of the Act, homeschooling parents and other parents in Nairobi.

### **3.4 Population Sampling**

Sampling entails the ‘act, process or technique of selecting a suitable sample, or a representative part of a population for the purpose of determining parameters or characteristics of the whole population’ (Kombo & Tromp, 2006). In this study the researcher used the purposive sampling method.

Purposive sampling is a form of non-probability sampling in which decisions concerning the individuals to be included in the sample are taken by the researcher, based upon a variety of criteria which may include specialist knowledge of the research issue, or capacity and willingness to participate in the research. Some types of research design necessitate researchers taking a decision about the individual participants who would be most likely to contribute appropriate data, both in terms of relevance and depth (Fraenkel & Wallen, 2006).

The eventual sample chosen was legal experts who were involved in the lobbying of the Act when it was a bill and those in the Ministry who were involved in the drafting of the same. As for the homeschooling parents, given the scanty information about them, the researcher identified a group of indigenous homeschooling parents introduced to him. The parents from the general public were a sample group of

parents in Strathmore University representative of divergent types of parents (age, profession, status). This was necessitated by the evident ease to the access of this sample, in addition to the fact that time was limited to extend the sample nationwide.

### **3.5 Sampling Procedure**

Sampling procedure refers to the process and guide as to how a sample is selected that includes the technique used. Though the study was predominantly a document desk review, the researcher included a limited sampling of expert respondents (due to the legal nature of the research questions) and homeschoolers to provide their perspective on the study questions. ‘Respondents’ refers to those who replied to, or responded to the research instruments. These were selected on the basis of their availability and willingness to participate in the study and possessed some technical knowledge relevant to the scope and depth of the study subject.

#### **3.5.1 Legal experts sampling procedure**

The researcher focussed on legal experts that were involved in the lobbying of the Education Bill before it became an Act in addition to formulators of the Act from the Ministry of Education, Science and Technology that were conversant with the legal interpretations of the provisions in the Act. The latter were also sampled according to the extent in which they participated in the drafting of the bill and subsequently the Act. Information on the legal experts outside the Ministry was found through contacts in the association of private schools in Kenya while the ones from the Ministry were walk-in inquiries by the researcher.

Two legal experts were interviewed and recorded while 5 questionnaires were collected (completed and emailed back) from the Ministry. Representatives in the Ministry were not comfortable with being recorded. A sample of the questionnaire for the Ministry of Education is attached (Appendix D).

#### **3.5.2 Other parents sampling procedure**

In order to get an objective view of what parents thought about their role, the researcher selected parents and students (who are parents) at Strathmore University as the sample population of study due to the easy access and diversity offered by the population. Staff members and students of Strathmore Business School were then identified as the sample population within the larger Strathmore University. The Human Resources Department provided the staff list with details of marital status and parents were identified from the total staff list. A total of 20 questionnaires were

completed and collected. An ongoing training program was selected at the Strathmore Business School and the participants (students) who are parents were given the questionnaires to fill in during the program break. A total of 26 questionnaires were filled in and collected. A sample of the questionnaire is attached (Appendix A).

The total questionnaires completed and collected from the non homeschooling parents was 46.

### **3.5.3 Homeschoolers sampling procedure**

This was the most difficult of population samples from which to collect data. The difficulty was due to the lack of official information about homeschooling in Kenya and the unwillingness of the homeschooling families to participate in such an exercise - given the uncertain legal status of homeschooling in Kenya. Estimated and unofficial numbers from HSLDA in the United States of America indicate the number of homeschooling families in Kenya at over 500 (HSLDA, 2014). Identification of this population was done through internet searches through which the researcher located a support group close to his location. The homeschooling support group identified is made up of 9 homeschooling families. This was the population selected for the study and within it a sample population was identified. Questionnaires were sent to the group and 7 questionnaires were completed and returned to the researcher via email. A sample of the questionnaire is attached (Appendix B).

## **3.6 Data Collection Sources and Methods**

Data collection refers to the gathering of specific information to prove, clarify or refute some facts. The researcher must be very clear at this stage of what kind of data would support the nature of research questions (Kombo & Tromp, 2006). Given the nature of the research, which was predominantly a secondary qualitative research, the document review of the legislations was supported by data from Delphi interviews and unstructured questionnaires to enrich the desk review findings. A research approval letter was obtained by the researcher from the respective University department for authenticity and credibility.

In cases where the researcher needed an objective opinion on matters such as the legal status of homeschooling, role of parents, philosophy behind the new Education

Act, interviews and unstructured questionnaires were included as research instruments. The research instruments chosen were determined by the nature of research questions vis-à-vis the answers they sought to find out.

### **3.6.1 Interviews**

These are questions asked orally. It could also be an oral administration of a questionnaire (Mugenda & Mugenda, 2003). The researcher opted for Delphi interviews that seek to go deeper in the subject matter. This was necessitated by the nature of philosophical inquiry that sought to establish underlying causes to observable phenomena. Interviews require interpersonal skills that create an environment conducive for the respondents to freely provide information.

The researcher created this environment through presentation of authority to carry out the research (Appendix E), sending the interview schedule (Appendix C) to the respondents before meeting them, giving them a call before the meeting to create rapport and request for convenient times to schedule interviews and using polite courteous language throughout the engagement with the respondents.

The interviews were carried out face to face, a single person at a time and at a venue of the respondent's convenience. The researcher ensured the meeting place was free of interruptions and noise by providing the respondent with what qualified as a good meeting place. The interview schedule provided a general guide of the sort of questions the researcher would ask but did not limit him from further inquiry into a specific area that was relevant to the study that might not been exhaustively answered by the respondent.

### **3.6.2 Recording the interviews**

The researcher used a tape recorder to capture the interviews. The advantages of recording were the freedom it allowed the researcher to listen and pay attention (body language) to the respondent as well as the ease with which the material is available for transcription in an accurate form. The researcher informed the respondents of the interview structure which included the recording component and sought their consent before proceeding. The audio recording was then sent to the interviewee as a transcript together with the recording in order to confirm its accuracy and thereafter append their signature as endorsement.

### **3.6.3 Questionnaires**

The questions in each of the questionnaires were developed after reflection on the objective and aim of the study. The research questions and their subsequent variables (themes) presented the substance for the structure and wording of the questions. The researcher chose unstructured questionnaires that had a limited number of contingency questions (yes or no answers).

The researcher ensured that the technical terms were defined at the beginning of the questionnaire to avoid any misunderstanding. The questions were structured using simple English words to replace technical terms that would mean the same.

### **3.7 Pilot Study and Pretesting of Research Instruments**

The questionnaires were tried out on two parents of different education levels from different departments, at Strathmore University. The first draft was then amended according to the issues the respondents of the pilot study gave and the final version was then developed with the assistance of the supervisor before being distributed to a larger sample group.

### **3.8 Validity and Reliability of Research Instruments**

#### **3.8.1 Validity**

This can be defined as the “degree to which results obtained from the analysis of the data actually represent the phenomenon under study” (Mugenda & Mugenda, 2003). Validity determines whether the research truly measured that which it was intended to measure or how truthful the research results are. This study would have had major challenges had it just restricted itself to the researcher’s review and interpretation of the document review. Instead, the inclusion of objective data collected from technical experts (legal) and homeschoolers themselves increased the validity of the data collected.

Recording of the interviews ensured that what was said was what was reported thus limiting instances of the researcher’s interpretation of the interviews. Open ended questions were carefully selected to allow the respondents freedom to express their views without limitation of answer options.

#### **3.8.2 Reliability**

This refers to the “degree to which a research instrument yields consistent results or data after repeated trials. This is normally influenced by random error, namely,

deviation from true measurement due to factors that have not been effectively addressed by the researcher. Examples of this include inaccurate coding, ambiguous instructions to respondents, interviewer or interviewee fatigue and interview bias” (Mugenda & Mugenda, 2003). The researcher sought to minimize random error in the research process thus increasing the reliability of the data collected. Pilot testing ensured questionnaire instructions and ease of completion were assessed before actual dissemination.

The questionnaires to the Ministry of Education were sent to various key departments to establish whether the feedback received was consistent. This was crucial since the questionnaire wanted to establish the Ministry’s position on the arguments and research questions raised by the study. The external and internal validity assessments were done to address any mitigating factors that could be employed to improve the data results and analysis.

In summary the researcher used the following methods to improve reliability and validity of the research instrument.

*(a) Triangular Method*

The researcher applied different data collection methods to decrease the chances of error in data collection as well as increase the possibility of similar results found in different settings.

*(b) Pre test/Pilot study*

Questionnaires were subjected to a pilot phase to ascertain that there were no errors in language, communication style, to safeguard the correct interpretation of meanings and reduce the researcher’s bias from influencing the respondents.

*(c) Member check approach*

This method ensures that the interviewee’s feedback is captured as accurately as possible thus reducing researcher bias (Bogdan & Biklen, 1998). The researcher sent the interviews’ audio content and draft transcripts to the interviewees so as to get their approval on the accuracy of data captured.

*(d) Politeness and receptive approach*

The perception of the interviewee to the interviewer is a key factor to the success of any interview (Denscombe, 2010). The interviewer determined to be polite, courteous and respectful in address and in the line of questioning during interviews. Punctuality and the appropriate dress code added to the researcher's credibility and reception by the interviewee.

The researcher made an effort not to influence the answers of the respondents by avoiding leading questions. The respondents found few simple, clear open-ended questions very attractive. Philosophical concepts were broken down and presented in simple English for any lay person to read and understand.

### **3.9 Data Presentation, Analysis and Interpretation**

Data collected from the research instruments come in raw form and needed to be organised in a way that it could be interpreted and analysed in a systematic manner (Mugenda & Mugenda, 2003).

Generally, the researcher developed an analysis tool that highlights the specific measurable variables under each research objective as well as the themes that informed the questionnaires and interviews (Figure 3.1 below). Data collected from the questionnaires was then coded according to the predetermined themes and paraphrased so as to align to the variables that were being measured. The measurable variables that guided research findings were derived from the literature review that was consistent with the selected philosophy of Jacques Maritain. Where there was a correlation of legislations reference to exact articles was made as seen in the chapter headed 'Research Findings'. An interpretation of the findings based on the philosophy of education of Jacques Maritain is provided for in this study under the heading 'Discussion'.

The random interviews and unstructured questionnaires completed were simply to support any hypothesis stated in the study especially confirming the research objectives. The analysis of the qualitative data collected refers to non-empirical analysis that does not require quantifiable data in content analysis (Mugenda & Mugenda, 2003).

### **3.9.1 Data organisation**

Data collected from the transcripts and questionnaires was first read through to ascertain that all questions were answered and any errors identified. The researcher designed uniform structure of the transcripts for ease of comparison of the two interviews.

Questionnaire feedback was arranged according to the research question variables and theme clusters. Questionnaires related to each research question were separated and assigned accordingly to enable the researcher to easily trace the ones under review.

### **3.9.2 Data Categorization**

This was the second phase which entailed arranging the information into theme clusters. The theme clusters were the variables that make up each research question according to the theoretical framework in Chapter 2. Contingency questions were the first and easiest to arrange while the other open-ended questions required the researcher to read through and pick the themes from the words in the answers. Each questionnaire was read and a theme was located from each. This would then be tabulated when all the others were categorized according to a similar theme.

### **3.9.3 Data Evaluation and Interpretation**

Beyond the technical evaluation indicated earlier to ascertain reliability and validity of the data collected, the researcher correlated the theme clusters to the document review results of similar nature. This was to identify patterns, differences and inconsistencies between the legislations under review. Each theme cluster, as it appeared in the questionnaire, was noted in terms of how many respondents said the same thing. The total was then tallied and this made up the evaluation and analysis of the extent to which the theme appears. This then would inform the extent to which the research question was answered given the number of times the variable correlates to the definition given.

The researcher analysed data using content analysis method which involved choosing an appropriate sample of texts, breaking down the text into smaller component units, developing relevant categories for analyzing the data, coding the units in line with the categories and then counting the frequencies with which these units occurred.

### **3.10 Ethical Considerations**

Ethics in research refers to the researcher's conduct and behaviour throughout the research process (Mugenda & Mugenda, 2003). The researcher's actions during this process have an impact to both themselves and their respondents. The researcher maintained the highest ethical considerations while carrying out data collection and especially in its analysis. Personal views and subjectivity were minimised as best as possible by relying on what experts in the field have said on the issues at hand as well as collection of objective data from third parties. A summary of the Turnitin report confirming the authenticity of this report is attached (Appendix F).

#### **3.10.1 Consent**

The consent of interviewees was required at the beginning of the recordings, following explanation of what the recording was for and verbally noting the agreement before commencement of any recording.

Transcripts of the interviews were sent to interviewees together with the audio recordings to get their consent and approval to use the said material for the intended purpose.

#### **3.10.2 Confidentiality and privacy**

Interviewees and respondents to the questionnaire were explained the purpose of the study and asked to give their consent before proceeding with any data collection. Transcripts from the interviews were sent in draft form to the interviewees for approval and appending of their signature before being used for this study. Personal information was optional especially names.

#### **3.10.3 Vulnerable populations**

Where respondents were not comfortable with the mode of data collection the researcher provided options that were suitable for their circumstance without compromising the quality of data collected. Populations such as the homeschoolers who remain uncertain about their legal status were explained about the need for the study, offered opportunity to view the work, provision of personal information was optional and were requested to sign a disclaimer that explained the use of the material.

All the questions in the interviews and questionnaires were designed according to the research objectives and in open-ended question format to allow respondents to freely express their views.

### **3.11 Conclusion**

Despite the challenges that qualitative research poses, the nature of this study warranted its use as the most suitable method. Researcher bias and subjectivity were mitigated by the use of interviews and unstructured questionnaires. Every research method has its challenges and cannot be fully divorced from the researcher's personal bias. The researcher took various measures as indicated above to give credence to this study that offers new insights into the role philosophy plays in education. The research methodology was ideal for the objectives of the study that were qualitative in nature seeking meanings and opinions on an issue. The research process highlighted depended on the nature of the research questions which in this case predominantly were document review based. Each research objective had specific measurable variables and parameters that define what will be measured and appear in the research findings in the next chapter. The research methodology in this chapter sets the stage for the reader's appreciation of the nature and content of the research findings in the next chapter.

Research methodology matrix

Research Questions	Source	Variables	Themes	Research method	Respondents
Meaning of Education	BEA	<ul style="list-style-type: none"> <li>Religious character</li> <li>Body and spiritual soul needs</li> </ul>	<ul style="list-style-type: none"> <li>Religion and Values</li> <li>Body and Soul</li> <li>God source of knowledge</li> </ul>	<ul style="list-style-type: none"> <li>Document Review</li> <li>Interview</li> <li>Questionnaires</li> </ul>	<ul style="list-style-type: none"> <li>Legal Experts</li> <li>Parents in general</li> </ul>
Parental choice to Homeschool	BEA COK	<ul style="list-style-type: none"> <li>Freedoms in Natural Law.</li> <li>Natural Right.</li> <li>School choice other than prescribed by State.</li> <li>Freedom(dignity of human person).</li> <li>Natural Law basis of parental choice.</li> </ul>	<ul style="list-style-type: none"> <li>Freedom of choice.</li> <li>Parental Authority.</li> <li>Nature of Right.</li> </ul>	<ul style="list-style-type: none"> <li>Document Review</li> <li>Interview</li> <li>Questionnaires</li> </ul>	<ul style="list-style-type: none"> <li>Legal Experts</li> <li>Ministry Officials</li> </ul>
Role of State and parents (including number of roles assigned to each)	BEA	<ul style="list-style-type: none"> <li>Principle of subsidiarity.</li> <li>Parents as first and primary educators.</li> <li>State Laws reflective of Natural and</li> </ul>	<ul style="list-style-type: none"> <li>State control.</li> <li>Origin of rights.</li> <li>Source and authority of Law</li> </ul>	<ul style="list-style-type: none"> <li>Document review</li> <li>Interview</li> <li>Questionnaires</li> </ul>	<ul style="list-style-type: none"> <li>Legal Experts</li> <li>Parents in general</li> </ul>

		<p>Divine Law.</p> <ul style="list-style-type: none"> <li>• Parental religious convictions influence on education choice.</li> <li>• Politics guided by Ethics.</li> </ul>	<p>and Politics.</p> <ul style="list-style-type: none"> <li>• Alignment to Constitution.</li> </ul>		
Reasons to homeschool	Homeschoolers (literature)	To what extent are these reasons consistent with Maritain's meaning of education?	<ul style="list-style-type: none"> <li>• Philosophical.</li> <li>• Religious.</li> <li>• Special Needs.</li> <li>• Circumstantial.</li> </ul>	<ul style="list-style-type: none"> <li>• Questionnaires</li> <li>• Literature Sources</li> </ul>	<ul style="list-style-type: none"> <li>• Homeschoolers</li> </ul>

**Figure 3.1 Research Methodology Matrix**

## **CHAPTER 4: RESEARCH FINDINGS**

### **4.1 Introduction**

The study investigated the meaning of education as explained in the Basic Education Act, determine the extent to which parental right to homeschool is provided for in the Constitution of Kenya and the Education Act, compare the roles of the State and those of parents in education and lastly to find out the reasons why parents homeschool in Kenya. Appendix G is a snapshot of the main areas of focus in the Act. The theoretical framework described in Chapter 2 gives the specific parameters that made up the research findings categories and later form the matter for discussions in the next chapter. To ensure objectivity in the opinions expressed in the study the qualitative research was supported by interviews and questionnaires targeting key stakeholders in the Ministry of Education, legal experts, homeschooling parents and other parents. This was to confirm legal opinions on the Act and the Constitution as well as parents' views on their roles and rights in education including homeschooling.

It is worth noting from the beginning, that the study included the Basic Education Amendment Bill, 2014 that had recently proposed amendments made to the Basic Education Act (2013) following meetings between the government and various stakeholders. Research findings and discussions will include the amendments from the said Bill. The research on the meaning of education which is at the heart of this research study was extensive and went further to include schooling (one of the medium through which education takes place). Here then is what the research found out arranged according to the research questions and their respective measurable variables (themes).

These findings therefore comprise of both the analysis from the document review and the theme cluster evaluation from the interviews and questionnaires (under notes following each documentary review). A summary of the findings is found in Appendix H.

### **4.2 Findings on Meaning of Education in the Act**

This section not only tackles the definitions given by the Act but also further sub sections related to the meaning of education such as schooling and its relation to

education, whom the Act considers as an educator and the place where education takes place. The following are the types of education listed in the Act.

“Basic education means educational programmes offered and imparted to a person in an institution of basic education and includes Adult basic education and education offered in pre-primary educational institutions and centres.” “Formal education means the regular education provided in the system of schools, and other formal educational institutions.”

“Non-formal education means any organized educational activity taking place outside the framework of the formal education system and targets specific groups/categories of persons with life skills, values and attitudes for personal and community development.”

“Special needs education includes education for gifted or talented learners as well as learners with disability and includes education which provides appropriate curriculum differentiation in terms of content, pedagogy, instructional materials, and alternative media of communication or duration to address the special needs of learners and to eliminate social, mental, intellectual, physical or environmental barriers to learners.”

Article 4 highlights the values and principles that guide the Act. Article 4(k) highlights an aim of education as “imparting relevant knowledge, skills, attitudes and values to learners to foster the spirit and sense of patriotism, nationhood, unity of purpose, togetherness, and respect.” When the Ministry of Education officials were asked where education takes place all the respondents cited institutions of basic education as defined by the Act.

### **4.3 Findings on Meaning of School in the Act**

Article 2 contains the broad definition of schools and the types of schools recognised.

“School means an institution registered under this Act that meets the basic prescribed standards and includes institutions offering alternative approaches of multi-grade, double-shift, mobile schooling, out of school programmes, adult and continuing education, distance or correspondence instruction, or accelerated learning and talent based institutions, but does not include: (a) any institution or assembly for

which a Cabinet Secretary, other than the Cabinet Secretary responsible for matters relating to basic education and training, is responsible; (b) any institution or assembly in which the instruction is, in the opinion of the Cabinet Secretary, wholly or mainly of a religious character; or (c) an institution mainly or wholly of a religious character.”

“Institution of basic education and training means a public or private institution or facility used wholly or partly, regularly or periodically for conducting basic education and training and includes a school, a tuition facility, an educational centre, an academy, a research institution, a school correctional facility or a borstal institution.”

Article 2 specifies what some of these listed schools are.

“Mobile school means a formal flexible institution that allows for mobility of pupils and teachers and is specifically designed to suit the needs of migrant communities.”

The same article has a separate type of school associated with the Muslim faith. They are the Madrassa and Duksi institutions. “Madrassa means the structural Muslim educational institutions or schools that offer Islamic and other subjects and are laddered from primary to secondary.”

“Duksi means Islamic elementary institution that offer Qur’anic education and other related subjects.”

Article 43 defines the three Basic educational institutions categories as public, private and sponsored. It is important to note that this article was amended to separate sponsored schools from public schools -the original definition of public schools included sponsored schools (Government of Kenya, 2014).

“Public schools which are schools established, owned or operated by the Government and include sponsored schools”. The Basic Education Amendment Bill (2014) deletes the words ‘include sponsored schools’.

“Private school means a school established, owned or operated by private individuals, entrepreneurs and institutions.”

The Basic Education Amendment Bill, 2014 states that, “Sponsored schools are schools established, owned or operated by sponsors but which the Government supports financially, materially or through the provision of teachers from the Teachers Service Commission.”

The same bill states that, “Sponsor means a person or institution that owns land or property on which an institution of basic education is instituted, and who provides foundational objectives to the institution and ensures that the educational and non-curricular objectives of the institution of basic education are met.”

Article 66(6) states, “In this section, ‘school’ shall include any part of the school and any building used in connection with the school, including workshops, dormitories, kitchens, sanatoria, hostels, ancillary buildings and any other buildings on the site of the school.”

Article 78(1) states, “A person shall not engage in the promotion, management, or teaching of basic education unless such person is accredited and registered in accordance with the provisions of this Act.”

Article 78(2) states, “A person may not use any premises or facilities to provide education and training through face to face, open, distant or electronic learning or any other mode of delivery unless the institution has undergone quality review and approved in accordance with this Act.”

The philosophy behind the Act seems to assume that education is a primary duty of the State which then defines its aims. Education is therefore divorced from religion as its source of values and ultimate end, consequently, threatening to introduce value free education (Mumma, 2015). 44 out of the 46 general parent questionnaires stated that education is NOT the same as schooling. They clearly define education as encompassing more than what happens in schools to include both formal and informal.

It is also worth noting that the Act has no directive on what qualifies as the age for one to start school (school going age).

#### **4.4 Findings on the Provision for Parental Choice to Homeschool in the Act and the Constitution of Kenya**

Article 2, as stated above, prescribes what qualifies as a school i.e. limited to institutions of basic education.

The same section does not mention ‘homeschooling’ in its list of prescribed schools.

Article 43 categories of schools limits schools to public and private with no allowance for any other form of school other than these two.

Article 2(5) of the Constitution of Kenya states that, “The general rules of international law shall form part of the law of Kenya. Article 2(6) further states that, “Any treaty or convention ratified by Kenya shall form part of the law of Kenya under this Constitution”.

Under the Bill of Rights (Chapter 4 of the Constitution of Kenya, 2010), Article 32 lists fundamental freedoms of conscience, religion, belief and opinion which include:

Article 32(2): “Every person has the right, either individually or in community with others, in public or in private, to manifest any religion or belief through worship, practice, teaching or observance, including observance of a day of worship”.

Article 32(3): “A person may not be denied access to any institution, employment or facility, or the enjoyment of any right, because of the person’s beliefs or religion”.

Article 32(4): “A person shall not be compelled to act, or engage in any act, that is contrary to the person’s beliefs or religion”.

Article 19 of the Constitution of Kenya states:

Article 19(3): The rights and fundamental freedoms in the Bill of Rights

- (a) belong to each individual and are not granted by the State;
- (b) do not exclude other rights and fundamental freedoms not in the Bill of Rights, but recognized or conferred by law, except to the extent that they are inconsistent with this Chapter; and
- (c) are subject only to the limitations contemplated in this Constitution.

Kenya has ratified the United Nations Universal Declaration of Human Rights (UNDHR), International Covenant on Economic, Social and Cultural Rights (ICESCR), International Covenant on Civil and Political Rights, African Charter on the Rights and Welfare of the Child, Convention on the Rights of the Child. Article 13 and 14 of the ICESCR provides for the liberty of parents or guardians to choose for their children schools other than those established by the public authorities who conform to minimum educational standards. It further recognizes the liberty of parents or guardians to ensure the religious and moral education of their children in conformity with their own convictions.

Article 18 of the UNDHR states that, “Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.” Article 26(3) of the UNDHR goes further to state, “Parents have a prior right to choose the kind of education that shall be given to their children.”

Article 11(4) of the African Charter on the Rights and Welfare of the Child states, “State Parties to the present Charter shall respect the rights and duties of parents, and where applicable, of legal guardians, to choose for their children schools other than those established by public authorities, which conform to such minimum standards as approved by the State, to ensure the religious and moral education of the child in a manner consistent with the evolving capacities of the child.”

All the 3 questionnaires from the Ministry of Education and the interviews with the two legal experts confirm that this Act does not recognise homeschooling. The legal experts cite the definition of school as an institution registered under the Act as well as the ‘teacher’ restricted to the definition as per that given by the Teachers’ Service Commission Act as excluding parents as ‘teachers’.

Most of the homeschooling respondents when asked about the legal status of homeschooling in Kenya stated that they were not sure (5 out of 7 respondents). Only 1 of the 2 remaining parents was sure that homeschooling is illegal while the other was not aware of its illegality.

When asked about the reservations and concerns the government has regarding homeschooling, 1 out of the 3 respondents from the Ministry of Education cited the inability to deliver standard curriculum, lack of certification of academic assessment and lack of promotion of national values that encourage unity.

Article 28 of the Basic Education Act 2013 makes free and compulsory education a right, Article 31(1) places a duty on parents to take children to school and Article 31(2) criminalises any parent that fails to take children to the schools as prescribed in the Act. Essentially, failure by the Act to recognise homeschooling as confirmed by the Ministry of Education respondents poses a criminal liability threat to parents that choose to homeschool (Kanjama, 2015). Parental right to choose homeschooling is a fundamental human right preceding the rights of the State and one that the State cannot grant to the parents. Freedom of choice is linked to freedom of conscience and the freedom to include religion as a source of your value system (Mumma, 2015).

32 of the 46 (70%) other parents responding from the general public believe that they have the freedom to choose the form of education best for their children. The reasons they gave were the natural authority they have over their children and the fact that they were the best placed persons to know what is best for their child. 14 out of the 46 (30%) disagreed and felt that they did not have the freedom of choice in education. The reasons cited are restrictive government policy, existing set curriculums, fear of radicalisation as a result of misusing the freedom and choice limited to the level of education. The same parents felt that secondary level and tertiary education is dictated by the State leaving them very little role at these stages.

#### **4.5 Findings on the Role of the State, as Compared to those of Parents, in Education according to the Basic Education Act**

Article 2 of the Act introduces the concept of parent. A parent, according to the Act means, “a mother, a father or a guardian of a child and includes any person who is responsible under the law to maintain a child or is entitled to a child’s custody”. Other articles in the Act stipulate the rights of parents in basic education. Article 4 highlights the values and principles that guide the reading and implementation of this Act. Article 4(1) states the “promotion of good governance, participation and

inclusiveness of parents, communities, private sector and other stakeholders in the development and management of basic education.”

The heart of parental responsibility is Article 30 sub-sections (1) to (3). Part (1) states “every parent whose child is: (a) Kenyan; or (b) resides in Kenya shall ensure that the child attends regularly as a pupil at a school or such other institution as may be authorized and prescribed by the Cabinet Secretary for purposes of physical, mental, intellectual or social development of the child.”

Article 30(2) “A parent who fails to take his or her child to school as required under sub-section (1) commits an offence”. It further states, in the same article sub-section (3) “a person who contravenes this section shall be liable on conviction to a fine not exceeding one hundred thousand shillings or to imprisonment for a term not exceeding one year, or both.”

Sub-section (4) of the same Article states, “Sub-section (2) shall not apply to a parent or guardian who presents within a reasonable time a reason to the satisfaction of the County Director of Education for the absence of his or her child at a school or institutions of basic education.”

Article 31 is titled ‘duty of parents and guardians’ which is indicated as:

Article 31(1) “It shall be the responsibility of every parent or guardian to present for admission or cause to be admitted his or her child, as the case may be, to a basic education institution.

Article 31(2) Where a parent or guardian defaults in the discharge of his or her responsibility under sub-section (1), such a parent or guardian shall be deemed to have committed an offence and is liable to a fine not exceeding one hundred thousand or to a period not exceeding two years or to both.

Article 31(3): A parent or guardian shall have the right to participate in the character development of his or her child.”

Article 35 in its original and amended version indicates in sub-section (2) “No pupil admitted in a school, subject to sub-section (3) shall be held back in any class or expelled from school except with the concurrence of the parents or guardians. The same Article sub-section (3) states, “subject to sub-section (1) the Cabinet Secretary

may make regulations to prescribe expulsion or the discipline of a delinquent pupil for whom all other corrective measures have been exhausted and only after such child and parent or guardian have been afforded an opportunity of being heard.”

Article 56 of the Education Act further states, “The Board of Management established under this Act shall consist of the following members appointed by the County Education Board: (a) six persons elected to represent parents of the pupils in the school or local community in the case of county secondary schools.”

The Basic Education (Amendment), 2014 on the same Article amends it as follows “Article 56 (1) of the principal Act is amended in paragraph (a) deleting the word six and replacing it with four” (Government of Kenya, 2014).

It is worth noting the functions vested upon the State and its affiliates such as Management boards/committees running pre-primary institutions and Basic education institutions. Their roles and duties include:

Article 39 states the responsibilities of the government.

“It shall be the duty of the Cabinet Secretary to –

- (a) provide free and compulsory basic education to every child;
- (b) ensure compulsory admission and attendance of children of compulsory school age at school or an institution offering basic education;
- (c) ensure that children belonging to marginalized, vulnerable or disadvantaged groups are not discriminated against and prevented from pursuing and completing basic education;
- (d) provide human resource including adequate teaching and non-teaching staff according to the prescribed staffing norms;
- (e) provide infrastructure including schools, learning and teaching equipment and appropriate financial resources;
- (f) ensure quality basic education conforming to the set standards and norms;
- (g) provide special education and training facilities for talented and gifted pupils and pupils with disabilities;
- (h) ensure compulsory admission, attendance and completion of basic education by every pupil;
- (i) monitor functioning of schools; and

(j) advise the national government on financing of infrastructure development for basic education.”

These roles and responsibilities do not end there since they continue through the affiliates of the State such as National and county education boards (Articles 5,18, 41, 53 and 82).

Article 58.1(d) “ensure the development of the children’s knowledge, self-confidence, free expression, spiritual and social values and appreciation of other people’s needs and views.”

Article 58.1(f) “facilitate the development of children’s affective, cognitive, psychomotor and physical attributes in an integrated manner including the development of talented and gifted pupils.”

In summary, the State is mandated under the new Education Act to promote and regulate free and compulsory education; to provide for accreditation, registration (Article 82), governance and management of institutions of basic education; develop and approve curriculum (Articles 74 and 75); provide for the establishment of national and county education boards as well as education standard and quality assurance commission.

All the Ministry of Education respondents revealed the fact that the State has the primary duty to educate. This differs from the responses from the non homeschooling parents, that showed 32 of the 46 (70%) assign parents the primary role of educating children.

22 of the 46 questionnaires (48%) by the same parents stated that the role of parents is to instil values and morals in their children and 9 of the 46 (20%) considered parents as the first and primary educators of their children.

7 out of 7 (100%) of the homeschoolers indicated that they are the primary educators and that their qualification to teach their children what is taught in schools is due to their natural place as parents (love).

34 of the 46 parents not homeschooling (74%) cited that parental authority originates from God while only 2 out of the 46 (4%) assigned it to the State.

24 of the 46 questionnaires (52%) of the parents not homeschooling felt that the role of the State should be building of facilities (schools) while 12 out of 46 (26%) of them said that the State's role is policy formulation (legal framework to enable learning). 8 out of the 46 (17%) said that the State's role is curriculum development.

On the question of to what extent the Basic Education Act reflected the rights and freedoms laid out in the Constitution of Kenya, all the Ministry respondents referred to Part IV Articles 28-40 which articulate rights of the child that include free and compulsory education, freedoms from torture, child abuse, expulsion and discrimination in public schools.

Legal experts interviewed on this issue stated that the Act failed to reflect the freedoms of conscience and religion, as relates to the choice of education, enshrined in the Constitution of Kenya (Mumma, 2015).

A thorough review of the Education Act confirms the disproportionate allocation of rights and responsibilities to the State as compared to those of the parents (5 parental roles versus 10 direct State roles not to mention the more than 5 indirect roles of the State through its affiliates such as management boards). Furthermore the Act lacks any mention of the prior and primary role of parents in the choosing and directing of the education of their children contrary to treaties ratified by Kenya that state the same.

The role of the State should be to set minimum standards, play a remedial role when parents fail or unable to carry out this duty of providing education and support parents in their natural role. The State should be seen as a partner in education and just one other provider like others and not as one monopolizing the provision of this service (Kanjama, 2015).

Article 174 of the Constitution of Kenya on objects of devolved government that include sub section (c) states that "to give powers of self-governance to the people in the exercise of the powers of the State and in making decisions affecting them". This is supported by legal experts who subscribe to the principle of subsidiarity that ensures powers, duties and responsibilities that can be carried out by individuals and families are supported and not usurped (Kanjama, 2015).

The State has many roles and rights as compared to those of parents. These include the implementation of the Act itself, development and supervision of quality standards in schools, oversight of education through national and county education boards, promotion and structure of basic education (including accreditation, licensing and registration) and curriculum development and approvals. This creates a quasi monopoly situation as questions arise on who supervises State run schools since the State cannot be the policy maker, implementer and auditor.

#### **4.6 Findings on Reasons why Parents in Kenya Homeschool**

The sample of homeschooling parents in Kenya were asked to fill the questionnaire (see Appendix B) that formed insights into understanding why they choose to homeschool. Parents that are not homeschooling were also asked their views on homeschooling and the findings correlated with what the homeschoolers said. This was the only research question that relied wholly on the questionnaires.

The main reasons given for choosing to homeschool by the Kenyan parents were predominantly of a philosophical nature based on their religious convictions. 5 out of the 7 respondents (72%) stated that they sought an education that was more than academic but was instead aimed at developing self-mastery. The same number indicated the importance of education that is imbued with religious values noting that God is the source and end of all knowledge. These parents believe in an education that is God-centred. These same convictions were manifested in the 5 out of 7 homeschoolers who had a curriculum that was faith based. 2 out of the 7 parents cited dissatisfaction with contemporary schooling systems which are not able to provide them with the education they want for their children.

31 of the 46 parents not homeschooling respondents (67%) were in favour of religious values forming the main, if not all, part of education given to their children. This is consistent with Professor Mumma's emphasis of the role religion plays in values and thus a key element in parental choice including homeschooling.

7 out of the 7 (100%) homeschoolers believe they are the best placed to know what form of education is best for their child. This is in contrast to their counterparts and their perceptions of homeschooling. When asked what challenges they would face if they were to educate their child at home instead of at school, 16 out of the 46 (34%) of them cited limited socialisation (negative effect of limited contact with other

children) and 8 out of the 46 (17%) cited time demands and sacrifice of the parents. Other challenges raised included high cost, lack of resources (access to materials for learning), social problems in the home affecting learning environment, denial of the benefits of competition available in schools, difficulty in distinguishing role as parent and teacher and difficulty in transition to other higher levels of education that require examination certifications.

The three main curricula used by homeschoolers interviewed were Christian Liberty Academy School System (CLASS), Seton Home Study Program and Accelerated Christian Education confirming the role that their religious beliefs play in their selection of curriculum. The same respondents cited the curriculum's provision of academic assessment while the two respondents (one of whom did not use a curriculum) did not see the need to subject their children to exams and assessments.

All 7 respondents when asked how they ensure the socialisation of the children challenged the meaning of the word 'socialisation' though 4 out of the 7 cited the home as the best place where socialisation takes place with the parents and siblings as the first and most important social contacts.

It is important to note that none of the homeschoolers cited the special needs of their children as a factor. 4 out of the 7 homeschoolers (57%) have been homeschooling for more than 5 years the longest being 9 years.

Demographically, 6 out of the 7 respondents were married while 1 was a widowed father responsible for the homeschooling of his children. 6 out of the 7 respondents had more than 3 children.

When asked about the challenges they face; 3 out of the 7 cited access to resources (library). Other challenges raised, by two respondents, were the mental shift from their default educational dispensation to understand homeschooling and the uncertainty around the legal status of homeschooling. 2 of the 7 respondents cited the negative perception of homeschooling and homeschooling families as a challenge since it makes it difficult to explain this choice. The homeschoolers possess such diverse backgrounds economically, socially and culturally but are united by one common denominator – the desire to be fully involved in the education of their children.

Other reasons that pioneer homeschoolers cite for choosing this education option are parental preference to use an individualized approach to learning (uniqueness of each child's learning styles) and need to build family bonds and unity (Muriuki, 2004). Technological advancements have empowered homeschoolers to access and do more in homeschooling giving them more flexibility and depth in content exposure.

From the literature source review the researcher established some relevant global facts on homeschooling that will later form the basis of discussion in the next chapter.

Most of the countries where homeschooling is illegal such as Germany and the Scandinavian countries have a very strong State-funded public school system while others have well established religious-run schools; although the whole concept of standardized education remains a thorny issue in public policy debates.

There are about 2.2 Million home-educated students in the United States. There were an estimated 1.73 to 2.35 million children (in grades K to 12) home-educated during the spring of 2010 in the United States (Ray, 2011). It appears the homeschool population is continuing to grow at an estimated 2% to 8% per annum over the past few years (National Home Education Research Institute, 2014).

The advent and growth of the Information and Communication Technology supported by the growth of the Internet usage has contributed to the rise of homeschooling in addition to rethinking the way education is done (Andrade, 2008).

According to the National Home Education Research Institute the most common reasons given for homeschooling are the following:

- (a) “customize or individualize the curriculum and learning environment for each child,
- (b) accomplish more academically than in schools,
- (c) use pedagogical approaches other than those typical in institutional schools,
- (d) enhance family relationships between children and parents and among siblings,
- (e) provide guided and reasoned social interactions with youthful peers and adults,

- (f) provide a safer environment for children and youth, because of physical violence, drugs and alcohol, psychological abuse, and improper and unhealthy sexuality associated with institutional schools, and
- (g) teach and impart a particular set of values, beliefs, and worldview to children and youth” (National Home education Research Institute, 2014).

Research findings from the National Home Education Research Institute indicate:

- (a) “The home-educated typically score 15 to 30 percentile points above public-school students on standardized academic achievement tests. (The public school average is the 50<sup>th</sup> percentile; scores range from 1 to 99.)
- (b) Homeschool students score above average on achievement tests regardless of their parents’ level of formal education or their family’s household income.
- (c) Whether homeschool parents were ever certified teachers is not related to their children’s academic achievement.
- (d) Degree of State control and regulation of homeschooling is not related to academic achievement.
- (e) Home-educated students typically score above average on the SAT and ACT tests that colleges consider for admissions.
- (f) Homeschool students are increasingly being actively recruited by colleges” (Ray, 2005).

Other statistics show the comparative excellence of homeschooled children to other school going children in reading proficiency, standardized testing scores in Math and language skills, the incomparable success rates of parents as tutors as compared to the best trained teacher in a public school, statistics of public school teachers that homeschool their children and the benefits of the attention, trust and atmosphere of love to the conducive learning environment for the child (Hahn, 1996).

In spite of these statistics, the reality in Kenya is different in terms of the perceptions of homeschooling by the general public. The number one reservation the non-homeschooling parents, in the research had about homeschooling is the limited socialisation (16 out of the 46 respondents). Other concerns raised included the high cost of homeschooling, limited access to resources, limited time by parents, high level of sacrifice by parents, difficulty in transition to higher levels of learning, non conducive environment for learning.

Contrary to popular opinion, homeschoolers are not a homogenous group. The research has identified this in their varied reasons for homeschooling plus the styles of schooling as seen in their different philosophies regarding curriculum use and choice as well as importance placed on socialisation and academic standards. Homeschooling allows families the freedom to choose the curriculum that best suits their convictions and aims of education. It enriches family life due to the alignment of learning to the family circumstance allowing for flexibility according to the parents' career schedules, geographical relocations, varied learning styles and freedom from standardized testing (optional to homeschoolers).

The home offers numerous natural settings for the intellectual and moral formation of the child. These include the faithfulness of the parents to their marriage vows, the contact with siblings, the richness of the wisdom of grandparents, the joys of family get-togethers, the care of the sick, young and elderly and the exercise of the authority of the parents over the children in character development. This is true education, a fact that the Education Act sadly ignores and therefore presents a watered down and shallow understanding and version of education that does not meet the real needs of the human person.

## **CHAPTER 5: DISCUSSIONS OF RESEARCH FINDINGS**

### **5.1 Introduction**

The research findings highlighted in the previous chapter need to be analysed, interpreted and evaluated in context. Given the fact that Jacques Maritain was the selected philosopher and his philosophy formed the variables that were used to measure the extent to which the questions were answered, this section is the culmination of the study. Here the researcher presents why this was a philosophical research by interpreting the findings according to the selected philosophy. Each research question and its respective findings will be understood and assigned meaning from what Maritain says about the themes presented.

### **5.2 Meaning of Education for Maritain**

The research findings observe the limited view the Act has on education, by stating that it should happen within the institutions registered under it. Non formal education, according to the Act, is for specific people contrary to what Maritain would consider as a feature of education for all. Given Maritain's emphasis on education entailing the whole person and specifically what goes on in schools, the Act places education narrowly within schools with no explicit mention of the home as a place where education takes place. Questions arise as to whether this Act envisioned education beyond formal schooling. A person is educated when they are able to control their lower faculties of passions, emotions and feelings and subordinate them to a trained intellect and free will. This is what makes the education of the human person unique. According to Maritain it is all about self-mastery and the ability to develop virtues as the goal.

An education system that has little regard for the primary role of moral formation before academic excellence is limited in meaning. The Act mentions character development as one of the duties of parents but once again fails to place it at a central place in the overall meaning of education. For Maritain this would be the key. An individual endowed with technical skills and knowledge but incapable of self-mastery is not educated, according to Maritain. Education policies that place emphasis on academic performance, rankings and national values miss out on the primary role of education which is to form the intellect with sound, immutable and

absolute truths as well as to present the will with the true goods that make man happy by putting God first.

Maritain says that a school is the place where education, in its deepest meaning, takes place. Formal schools, as creations of modernity, reflect modern political philosophical ideas that place education at the service of the State. Further, schools should complement the role, values and philosophy of the family. There is no indication of hierarchy of values in the Act. It is no wonder that the findings reveal a silent but obvious underlying assumption in the Act of the primary role of the State in the education of children. Article 4 of the Act cites the aim of education as attainment of national goals.

An education that is delinked from religion is not true education capable of fulfilling the deepest yearnings of man. The Act seems to aim at an education devoid of religious influence and thus value free (Mumma, 2015). This is contrary to parental views that favour religious values wholly integrated into education. Maritain argues that religion gives education the values that it should espouse as well as the direction to follow. Religion provides the answers to the origin of the Universe where all knowledge is found that forms the sciences studied in education. Without a respect and awareness of the origin and end of the Universe education becomes imbued with subjective and relative truths controlled by powerful interest groups and popular consensus. Education devoid of values from religion becomes dehumanising since Man's ultimate source of happiness is God and education aims at providing the tools to attain this goal. Modernity following the thoughts and influences of Rene Descartes and Immanuel Kant sought to dismiss the place and role of immutable and absolute truths from the metaphysics of the Ancient and Christian eras. An introduction of empirical and rational criteria in ascertaining truths rendered theology and the philosophy grounded in Aristotelian and Thomistic foundations irrelevant in modern education. French Enlightenment thinkers were more radical in their rejection of religion and in creating a new State and autonomous man capable of creating their own truths and morality without the Church.

Maritain sought to correct some of these errors; which explains why he placed religion at a central role in education. Recent attempts in the US to remove any

reference of God in word or image (Supreme Court rulings *Engel v. Vitale* in 1962 and *Abington School District v. Schempp* the following year) shows the extent to which modern State's seek to create value free education. In both these cases public manifestations of religion especially in public schools were challenged. Maritain maintains that morality has its objective source in nature and revelation from God. As a result, education has a deep and far reaching objective other than just ensuring that State goals are met. The human person is a composite union of material body and spiritual soul thus education that only addresses his material needs in dehumanising. The human nature though endowed with the capacity to do good, is affected by original sin that distorted this capacity. This awareness is at the heart of understanding education and its aim. Here is where the Act faces its biggest challenge. A critical look at the philosophy informing the Act's first premise in the meaning of education reveals a problem. As long as this foundation is wrong then any provisions reflected in the Act are likely to fail the litmus test on reliability and validity of philosophical basis.

### **5.3 The Basis for Parental Rights to Choose Education for their Children**

It naturally follows that education, as defined by Maritain, cannot be confined to formal institutions as registered under the Act. The religious basis and foundations of values in education cannot be delinked from the first source of these values-the parents. Parents' role in the education of children is a natural given and one Maritain would consider as originating from Natural Law consistent with divine and eternal law. Parental role in the education of children comes as a natural consequence of the free act of begetting children. These rights are inherent in their authority that comes from God. This is consistent with the question on the source of parental authority set out in the questionnaires for non-homeschooling parents to confirm this.

Maritain, who was instrumental in the drafting of the United Nations Universal Declaration of Human Rights, was a great proponent of rights originating from Natural Law which is obvious to all. The right of a parent to choose and direct the education of their child is a natural, fundamental and human right. This right is an immutable truth that cannot be conferred to the parents by the State. The Act seems to give the State the mandate of deciding what the duties and rights of parents are.

The Constitution of Kenya on the other hand seems to acknowledge the inherent nature of parental rights while confirming the role of their conscience and religion in the learning option they choose for their children. This recognition of the rightful place and relation between the State and the individual is central in Maritain's political philosophy. He held that natural rights are fundamental and inalienable, and antecedent in nature, and superior, to society. Still, they should not be understood as 'antecedent' in a temporal sense and do not form the basis of the state or of the civil law. Rights are grounded in the Natural law, and specifically in relation to the common good. It is this good, and not individual rights, that is the basis of the state, and it is because of this that Maritain held that there can be a hierarchical ordering of these rights (Maritain, 1998). The concern any State should have is whether homeschooling goes against the common good. All evidence points to the contrary with facts that show the patriotic attitude and sense of nationhood homeschoolers have. The right to choose homeschooling is therefore valid and solidly grounded in Natural Law, Divine Law and reflected in any human laws that are consistent with these sources of law. Research findings showed a strong backing for homeschooling by International Law ratified by Kenya confirming the position that Maritain places of the State as supportive of the family and only called in to provide education as a remedial cause. Questionnaire responses from homeschoolers are consistent with these assertions, namely the awareness of their right and authority over their children as prior and superior to that of the State. The UNDHR stipulated universal human rights on the basis of rights that were obvious to all and revealed to us by nature. Subsequent International Laws have reflected the same, although recent attempts to dismiss the role and place of Natural Law have seen the emphasis placed on positive laws (laws promulgated by the powerful and those who wield numbers in voting). Consequently, we have recently witnessed the revision of rights that were never a subject of public debate proposed to all as human rights. Positivism threatens to create an amorphous and fluid basis of rights that is subject to manipulation and influence by the powerful at the expense of the weak.

Man shares the spiritual nature of spiritual beings such as Angels and God in having a free will. This is what makes the human person unique and different from animals since he is not driven by instinct but makes choices driven by a well formed intellect

and a free will that seeks what is good according to the nature and end of man. The potential to exercise this freedom responsibly is hampered by a defective nature rooted in the effects of original sin. The aim of education (and any social order intervention) is thus to be aware of this reality and to train the human faculties towards self mastery and attainment of God as the ultimate end (Abad&Fenoy, 1995). This principle of freedom is very central in Maritain's moral philosophy. Any law that curtails parents from exercising their natural and fundamental right to choose what is best for their children fails to respect the order set out by God for social harmony and attainment of the common good. Laws promulgated by the State have to reflect the will of the sovereign God for them to be just. Parents who opt to homeschool, as per the reasons they gave, have freely chosen to be involved in the education of their children to the furthest extreme. This choice when informed by their conscience and religious plus philosophical convictions is consistent with God's plan for marriage and family as the school of virtues.

The Act by failing to recognise homeschool places parents at a precarious position given the fact that their choice is within their freedom as individuals and the fact that their authority over their children is not granted by the State. The research findings presented reviews of both legislations (the Basic Education Act and the Constitution of Kenya) which were supported by legal interpretations from the experts interviewed. The legal experts expressed concern at the Act's limited reflection of freedoms and rights as enshrined in the Constitution. Though the Constitution highlights the central place and role of the family for social order, the Act's relegates parents to a secondary role subsidiary to that of the State.

#### **5.4 Maritain Philosophy on the Role of State and Parents**

A theocentric humanism, Maritain would argue, has its philosophical foundation in the recognition of the nature of the human person as a spiritual and material being — a being that has a relation to God — and morality and social and political institutions must therefore reflect this. The family is the fundamental unit of society deserving recognition and protection by the State. The State is thus good insofar as it respects the natural roles of constituent units that make up society and provides legal framework that recognize these roles and support them. Families, and by extension, parents have always carried out the task of educating long before formal schooling

was introduced. Free and compulsory laws that deny parents the right to choose from various options, including those not prescribed by the State, go against the fundamental nature of the role of the parent. The Act is fundamentally handicapped at its foundational stage. Experts argue that its problems begin from the philosophy in which it is based, that is, the State as the primary and central provider of education (Mumma, 2015).

It is no surprise that the State appears as being in total control of the policy making, ownership and management of school as well as the supervision of education. This goes against the role it should play as one other partner in education closely collaborating with key stakeholders.

It is by virtue of their individuality that human beings have obligations to the social order, but it is by consequence of their personality that they cannot be subordinated to that order. State goals for nationhood are noble as long as they do not infringe on freedom of choice especially in the content and method of learning. The disproportionate number of roles assigned to the State in the Education Act compared to that of parents confirms the foundational philosophy driving this law. Ministry of Education officials also confirm the primary and central role of the State in education. Freedom of religion is at the heart of freedom of choice for parents since this is the source of values imbued in the education content. Parental involvement in the choice and management of curriculum is limited since the State controls this function in the development as well as approval of any curricula. Parents strongly express the need to have religious values wholly imbued in education even though they are aware of the challenges where the State controls the content of education. This concern is confirmed by the quasi-monopoly situation perceived in the Act.

## **5.5 Basis for Justification of Homeschooling**

Homeschooling is not a strange concept and yet despite the fact that it existed long before any formal schooling system it continues to elicit mixed reactions. State control of education is becoming a common phenomenon with examples of outright banning of homeschooling in some countries. Reasons given by these opponents of it include the danger of radicalisation and threat to the common good (shared

national values). Debates still linger on as to what extent a State can enforce its laws where particular individuals reject them on moral or religious grounds. The push to conform all citizens at the expense of individuality is a modern day reality.

Homeschooling, as we have seen from the research findings, has overcome all the perceived challenges and although not everyone would or must subscribe to it, it evidently competes well with conventional schooling options. From a philosophical point of view, parents who choose to homeschool are within Natural Law and reason to exercise this freedom. Despite the fact that Maritain does not explicitly endorse homeschooling one can infer, from the primary role and place he gives parents, the conclusion that this choice is superior to the position taken by the State insofar as it does not endanger the common good.

Nations that have this philosophy as a foundation in their education policy have sought to embrace homeschooling and consider it as a partner. They have, indeed, looked for ways to introduce different forms of regulation. Kenyan parents who choose to homeschool are within their fundamental human rights to decide on the extent of involvement in the education of their children.

## **5.6 Role of Philosophy in the Education Policy**

This whole study has brought to the fore the benefits that public policy, Politics and Law can reap from the guidance of philosophy. Today's public debate on problems affecting humanity stands to gain from the deeper understanding of the nature of man, his relation to the Universe and the moral transcendental dimension of his actions. Any time man acts freely morality comes to play. A morality and law subject to individual whims and relativism presents a fluid ever changing basis for truth that leaves society divided and disillusioned. Philosophy enlightens our understanding of the nature and limitations of human nature and subsequently the best approaches to address the social and human challenges thereof.

Maritain's advancement of Aristotle's Ethics, presents us with a higher reason for morality and Politics. Maritain's contribution in introducing the transcendental dimension of man's existence reintroduces the solid foundations of immutable metaphysical truths that have guided social order and ensured peace and harmony.

Every education theory is guided by a way of thinking we call Philosophy. There is room to rethink the service philosophy can offer law and politics in guiding legislation and policy formulation.

## **5.7 Conclusion**

Philosophy is all about ideas and the search for causes and meaning behind realities. As a science it probes existing social challenges with the aim of provoking further thought and in-depth analysis of underlying causes. This section demonstrates the difference philosophy makes when applied in real public policy issues to determine the underlying ways of thinking that are informing the spirit and provisions of the statute. The research findings from this study could be interpreted in various ways but the richness and uniqueness of this study is its ability to apply philosophy and Ethics to real challenges facing man. Whether we like it or not we are constantly being influenced by ideas that are driving laws and actions. Any law is a reflection of a philosophy behind it even when the formulators are not aware or conscious of it. This study interrogated a statute beyond the mere face value analysis by addressing the underlying thinking behind it that determines its approaches to education. Maritain's rich and diverse philosophy that cuts across metaphysics, epistemology, moral and political philosophy as well as his involvement in the defending and promotion of Natural Law as a basis of rights, has served to give the research findings a deeper and holistic evaluation.

## **CHAPTER 6: CONCLUSIONS AND RECOMMENDATIONS**

### **6.1 Introduction**

This section gives a summary of conclusions and recommendations. The question as to what extent the Kenya Basic Education Act (2013) provides for parental choice to homeschool marks the last statement following the verdict for each research question. The section will end with some recommendations on possible ways of solving the issues the study has raised. These recommendations are secondary since the heart of this study was an evaluation of existing legislations from a philosophical point of view.

The conclusions arrived at have been informed by the analysis and evaluation of the research findings according to the Philosophy of Jacques Maritain. Maritain's philosophy provided the meanings of the research questions and subsequently the yardstick of measurability of the results to the meanings assigned to them. The study was based on the argument that the philosophical understanding of meaning of education, who educates, informs the place where education is considered to happen. This understanding highlights the origin and basis of parental authority and freedom to choose and direct the education of their children.

### **6.2 Meaning of Education in the Basic Education Act 2013**

To begin with the Act has been found wanting in its philosophy. The meaning of education in the Act is limited to what happens in institutions of basic education with no mention of the transcendental nature of education (to lead man to God). This narrow definition of education leads to a limited view of where education happens and who educates. Parents as educators and the home as a school are therefore incompatible with the Act's limited view of education. Instead, the Act seems to reject the role of religion confirmed as a guide in the meaning and content of education (values). The Act's meaning of education, therefore, fails the test of its reflection of Maritain's deep philosophical meaning of education pegged on the nature of the human person and his ultimate end.

### **6.3 Extent to which Parental Choice to Homeschool is provided for by the Constitution of Kenya and the Basic Education Act**

The Act does not provide and recognise parental choice to homeschool. By its limited understanding of education it follows that the provisions in the Act would not accommodate a different view of education. The Act not only fails to recognise homeschooling as an education option but criminalises parents who choose it. Since the Act was being compared to the Constitution, the former is not aligned to fundamental freedoms enshrined in the Constitution (and International Law ratified by Kenya) that support homeschooling. The Act violates the freedoms of choice that parents naturally have to direct and choose the education of their children including education options not prescribed by the State.

### **6.4 Role of the State as compared to Parents in the Education of Children according to the Education Act**

The Act's philosophy of the State as the primary educator manifests itself in the quasi-monopoly situation it creates. The State has disproportionately more rights, duties and responsibilities compared to those of parents who are meant to be the first and primary educators of their children. The central place of parental authority, such as in the right to choose and direct the education of the child as being above the right of the State over the children, is lacking. Parents' natural rights and authority over their children has been usurped by the State and parental consent in the manner and end of the education their children receive has been diminished.

### **6.5 Reasons why Parents in Kenya Homeschool**

The reasons parents in Kenya are choosing homeschooling are consistent with what Maritain considers as education and evidently absent in prescribed forms of schooling available to parents today. These parents confirm the fact that they primarily choose to homeschool based on philosophical and religious convictions pertaining to what education should be. Homeschoolers are not homogeneous in nature and though they opt for an education 'little known' in Kenya, their reasons are within their natural, fundamental and Constitutional right to be recognised and supported.

## **6.6 Recommendations**

The study has exposed a fundamental flaw in the philosophy on which the Act is based. Any cosmetic amendments to this Act without a revisit and rethinking of the philosophical foundations of the Act will serve little purpose in addressing the real issues raised by the Study. The ambiguity and inconsistency of terminologies and meanings in the Act and its failure to align itself to the Bill of Rights in the Constitution of Kenya (and International treaties relevant to education) is worth scrutinising further to avoid the relegation of such a crucial law to the subjective interpretation of parties with vested interests. There is a correlation between one's understanding of the meaning of education and where they consider it should take place.

## **6.7 Conclusion**

Any research aims to add knowledge in addition to providing solutions to existing problems. This study has been no exception in its ability to showcase the applied nature of Philosophy to analyze a statute and guide revisions of the said document. A flawed philosophical basis leads to a lack of clarity and direction in definition of terms, application and implementation of the meanings assigned to them. This is the case of the statute in question. The extent to which it recognises and subsequently provides for education in its varied and deeper sense is determined to the philosophy informing it.

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## **APPENDICES**

### **APPENDIX A: Questionnaire (Non-Homeschooling Parents)**



## **SCHOOL OF HUMANITIES AND SOCIAL SCIENCES**

### **AN ANALYSIS OF THE EXTENT TO WHICH THE KENYA BASIC EDUCATION ACT 2013 PROVIDES FOR PARENTAL CHOICE TO HOMESCHOOL: ROLE OF PARENTS AS FIRST AND PRIMARY EDUCATORS.**

#### **NON HOMESCHOOLING PARENTS QUESTIONNAIRE**

##### **Introduction**

I am a Master of Applied Philosophy and Ethics student at Strathmore University undertaking a field research for my dissertation. This study seeks to analyze the newly enacted Basic Education law specifically in terms of what it understands as education, who educates and where education takes place (provision for parental choice to homeschool). Please note that the data collected in these questionnaires is only for the academic purposes stated and none of this material will be used for any other purpose without your consent. The researcher assures you of utmost professionalism and confidentiality of all the information you provide. Once the study is completed you are invited to write to the researcher should you need access to the work (tmundia@strathmore.edu).

##### ***Definition of key terms***

‘Homeschooling’ also referred to as ‘Home Education’ is an “elective practice whereby children are educated directly under the personal oversight of their parents, often though not exclusively by their parents and usually in a home setting” (what is taught at school is now taught at home). It entails parents (or tutors) responsible for both the planning and implementation of the instruction of their children including academic.

‘Parental choice’ refers to the freedom to opt amongst various education options encompassing central role in choosing and directing the education of one’s children.

**PERSONAL INFORMATION**

**Name** \_\_\_\_\_  
*(optional)*

**Profession** \_\_\_\_\_

Married  Single parent  Divorced  Widowed

**Age** 20-29  30-39  40-49  Over 50

1. Is Education the same as schooling? YES  NO

Why?

\_\_\_\_\_

2. Who has the primary role and duty of educating children?

\_\_\_\_\_

3. What is the role of parents in the education of their children?

\_\_\_\_\_

4. What role should the State/Government play in Education?

\_\_\_\_\_

5. To what extent should religious values form part of the education of children

\_\_\_\_\_

6. Do you have the freedom as a parent to choose any form of education for your

children    YES     NO

Why?

---

7.    What are the challenges of educating a child at home instead of a school  
      (public or private)

---

---

**Declaration**

I have read, understood and agreed with the purposes of this questionnaire. The data I have provided is truthful and unbiased. I am aware that the same data will be used for academic purposes only.

Signature

---

Date

---

## **Appendix B: Questionnaire (Homeschooling parents)**



### **SCHOOL OF HUMANITIES AND SOCIAL SCIENCES**

## **AN ANALYSIS OF THE EXTENT TO WHICH THE KENYA BASIC EDUCATION ACT 2013 PROVIDES FOR PARENTAL CHOICE TO HOMESCHOOL: ROLE OF PARENTS AS FIRST AND PRIMARY EDUCATORS.**

### **HOMESCHOOLERS QUESTIONNAIRE**

#### **Introduction**

I am a Master of Applied Philosophy and Ethics student at Strathmore University undertaking a field research for my dissertation. This study seeks to analyze the newly enacted Basic Education law specifically in terms of what it understands as education, who educates and where education takes place (provision for parental choice to homeschool). Please note that the data collected in these questionnaires is only for the academic purposes stated and none of this material will be used for any other purpose without your consent. The researcher assures you of utmost professionalism and confidentiality of all the information you provide. Once the study is completed you are invited to write to the researcher should you need access to the work (tmundia@strathmore.edu).

#### ***Definition of key terms***

‘Homeschooling’ also referred to as ‘Home Education’ is an “elective practice whereby children are educated directly under the personal oversight of their parents, often though not exclusively by their parents and usually in a home setting” (what is taught at school is now taught at home). It entails parents (or tutors) responsible for

both the planning and implementation of the instruction of their children including academic.

‘Parental choice’ refers to the freedom to opt amongst various education options encompassing central role in choosing and directing the education of one’s children.

## PERSONAL INFORMATION

**Name**

---

*(optional)*

**Period you**

**have been**

**homeschooling**

---

Married  Single parent  Divorced  Widowed

1. What made you choose to homeschool your children?

---

2. Which curriculum are you using?

---

3. What factors influenced the choice of the curriculum you are using?

---

---

4. ‘Parents are not teachers’ What is your response to this statement?

---

---

5. How do you ensure your children are meeting the academic standards of each level of schooling

---

---

---

6. What do you do to ensure your children are socialized

---

7. What are the challenges you face as a homeschooler

---

8. What conditions are necessary for successful homeschooling

---

---

9. What is the legal status of homeschooling in Kenya

---

---

**Declaration**

I have read, understood and agreed with the purposes of this questionnaire. The data I have provided is truthful and unbiased. I am aware that the same data will be used for academic purposes only.

Signature

Date

---

---

## Appendix C: Interview Schedule (Legal experts)



### SCHOOL OF HUMANITIES AND SOCIAL SCIENCES

## AN ANALYSIS OF THE EXTENT TO WHICH THE KENYA BASIC EDUCATION ACT 2013 PROVIDES FOR PARENTAL CHOICE TO HOMESCHOOL: ROLE OF PARENTS AS FIRST AND PRIMARY EDUCATORS.

### LEGAL EXPERTS QUESTIONNAIRE

#### **Introduction**

I am a Master of Applied Philosophy and Ethics student at Strathmore University undertaking a field research for my dissertation. This study seeks to analyze the newly enacted Basic Education law specifically in terms of what it understands as education, who educates and where education takes place (provision for parental choice to homeschool). Please note that the data collected in these questionnaires is only for the academic purposes stated and none of this material will be used for any other purpose without your consent. The researcher assures you of utmost professionalism and confidentiality of all the information you provide. Once the study is completed you are invited to write to the researcher should you need access to the work (tmundia@strathmore.edu).

#### ***Definition of key terms***

‘Homeschooling’ also referred to as ‘Home Education’ is an “elective practice whereby children are educated directly under the personal oversight of their parents, often though not exclusively by their parents and usually in a home setting” (what is taught at school is now taught at home). It entails parents (or tutors) responsible for both the planning and implementation of the instruction of their children including academic.

‘Parental choice’ refers to the freedom to opt amongst various education options encompassing central role in choosing and directing the education of one’s children.

**PERSONAL INFORMATION**

**Name**

---

*(optional)*

**Profession**

---

1. As one involved in the lobbying during the drafting of this new Education Act, what were the issues that you raised against it

---

2. How does one reconcile State interests in education with parental freedoms and choice in the same?

---

3. What are the duties, roles and rights of the State in education according to the new Act and what are your comments

---

4. How does the new education Act compare with the fundamental rights enshrined in the Constitution of Kenya

---

5. Which international laws support the central role of parents as the first and primary educators of their children

---

6. How much does this Act guarantee parental choice and freedom to direct and choose the education for their children including homeschooling?

---

---

7. \_\_\_\_\_  
What should be the ideal role of the State in the education of children  
\_\_\_\_\_

8. \_\_\_\_\_  
In conclusion what recommendations would you have for the way the new Act  
can recognize and protect the central role of parents and the family in the  
education of children  
\_\_\_\_\_  
\_\_\_\_\_

**Declaration**

I have read, understood and agreed with the purposes of this questionnaire. The data I have provided is truthful and unbiased. I am aware that the same data will be used for academic purposes only.

Signature

Date

\_\_\_\_\_

\_\_\_\_\_

## **Appendix D: Questionnaire (Ministry of Education official)**



### **SCHOOL OF HUMANITIES AND SOCIAL SCIENCES**

## **AN ANALYSIS OF THE EXTENT TO WHICH THE KENYA BASIC EDUCATION ACT 2013 PROVIDES FOR PARENTAL CHOICE TO HOMESCHOOL: ROLE OF PARENTS AS FIRST AND PRIMARY EDUCATORS.**

### **MINISTRY OF EDUCATION QUESTIONNAIRE**

#### **Introduction**

I am a Master of Applied Philosophy and Ethics student at Strathmore University undertaking a field research for my dissertation. This study seeks to analyze the newly enacted Basic Education law specifically in terms of what it understands as education, who educates and where education takes place (provision for parental choice to homeschool). Please note that the data collected in these questionnaires is only for the academic purposes stated and none of this material will be used for any other purpose without your consent. The researcher assures you of utmost professionalism and confidentiality of all the information you provide. Once the study is completed you are invited to write to the researcher should you need access to the work (tmundia@strathmore.edu).

#### ***Definition of key terms***

‘Homeschooling’ also referred to as ‘Home Education’ is an “elective practice whereby children are educated directly under the personal oversight of their parents, often though not exclusively by their parents and usually in a home setting” (what is taught at school is now taught at home). It entails parents (or tutors) responsible for

both the planning and implementation of the instruction of their children including academic.

‘Parental choice’ refers to the freedom to opt amongst various education options encompassing central role in choosing and directing the education of one’s children.

**PERSONAL INFORMATION**

**Name** \_\_\_\_\_

*(optional)*

**Employer** \_\_\_\_\_

**Title** \_\_\_\_\_

1. What were the prevailing conditions in education that necessitated the enactment of a new Education Law?  
\_\_\_\_\_

2. To what extent has the new Act addressed the freedom of choice in education  
\_\_\_\_\_  
\_\_\_\_\_

3. According to the Ministry where does education take place?  
\_\_\_\_\_  
\_\_\_\_\_

4. To what extent does the Act provide for parental choice to homeschool?  
\_\_\_\_\_

5. What are the reservations and concerns ( if any) of the Ministry regarding homeschooling  
\_\_\_\_\_

---

6. Who, according to the policy makers, has the primary duty of providing education to the children/citizens

---

7. To what extent has the new education Act reflected the rights and freedoms of parents in education according to the Constitution

---

---

**Declaration**

I have read, understood and agreed with the purposes of this questionnaire. The data I have provided is truthful and unbiased. I am aware that the same data will be used for academic purposes only.

Signature

---

Date

---

## Appendix E: SHSS Research approval letter



**Strathmore**  
UNIVERSITY

15<sup>th</sup> June 2015,

**To whom it may concern**

**RE: REQUEST TO CONDUCT RESEARCH**

This is to certify that Thomas Mundia Gathure (Admission N<sup>o</sup> 31253) is a Master of Applied Philosophy and Ethics student at Strathmore University. To complete his Master's degree he is required to write a dissertation applying the knowledge and skills he has acquired.

His dissertation on "*The Kenya basic Education Act (2013) and the parental Right to Homeschooling*" requires him to interview respondents.

Furthermore, we hope that his research will benefit your institution, management and staff.

We shall appreciate any assistance given to him.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'M. Dimba'.

Dr. Magdalene Dimba

Ag. Director of Research,  
School of Humanities and Social Sciences

STRATHMORE UNIVERSITY  
SCHOOL OF HUMANITIES AND SOCIAL SCIENCES  
P. O. Box 59857 - 00200, NAIROBI  
TEL: 0703 034 000

## Appendix F: Turnitin Report

MAPE Final dissertation-TMG-31253

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ORIGINALITY REPORT

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## Appendix G: Preamble of Kenya Basic Education Act, 2013

No. 14	220 <i>Basic Education</i>	2013
<b>THE BASIC EDUCATION ACT, 2013</b>		
<b>AN ACT of Parliament to give effect to Article 53 of the Constitution and other enabling provisions; to promote and regulate free and compulsory basic education; to provide for accreditation, registration, governance and management of institutions of basic education; to provide for the establishment of the National Education Board, the Education Standards and Quality Assurance Commission, and the County Education Board and for connected purposes</b>		
<b>ENACTED</b> by the Parliament of Kenya as follows—		
<b>PART I — PRELIMINARY</b>		
Short title.	<b>1.</b> This Act may be cited as the Basic Education Act, 2013.	
Interpretation.	<b>2.</b> In this Act, unless the context otherwise requires— “accreditation” means the procedure by which the accreditation agency formally recognizes the status of an institution offering basic education and confirms in writing by way of a documentation issued under this Act; “adult” means an individual who has attained the age of eighteen years; “adult and continuing education” means the learning processes within the perspective of lifelong learning in which an adult or out-of-school youth is granted an opportunity in an institution of basic education for purposes of developing abilities, enriching knowledge and improving skills; “adult basic education” means basic education offered as a full-time or part-time course to a person who is above the age of eighteen years and includes education by correspondence, the media of mass communication and the use of libraries, museums, exhibitions or other means of visual or auditory communication for educational purposes and “Adult learning” shall be construed accordingly; “basic education” means the educational programmes offered and imparted to a person in an institution of basic education and includes Adult basic	

2013

*Basic Education*

No. 14

education and education offered in pre-primary educational institutions and centres;

“Cabinet Secretary” means the Cabinet Secretary for the time being responsible for matters relating to Basic education and training;

“child” means an individual who has not attained the age of eighteen years;

“community” means persons residing in the neighbourhood of a basic education institution;

“County Director of Education” means a Director appointed under section 52;

“County Education Board” means a Board established as an agency of the national Government to serve the relevant county under section 17;

“curriculum” means all the approved subjects taught or programmes offered and includes all the activities provided at any institution of basic education;

No. 8 of 2012

“Director-General” means a person appointed under the Public Service Commission Act and responsible to the Cabinet Secretary;

“Duksi” means Islamic elementary institution that offers Quranic education and other related subjects;

“Education Appeals Tribunal” means the Appeals Tribunal established under section 92;

“EMIS” means Educational Management Information System;

“Education Standards and Quality Assurance Commission (ESQAC) means the Commission established under section 62;”

“formal education” means the regular education provided in the system of schools, and other formal educational institutions;

No. 20 of 2012

“headteacher” has the meaning assigned to it under the Teachers Service Commission Act;

“ICT Integration and Education” means the seamless incorporation of information communication technologies to support and enhance the attainment of curriculum objectives, to enhance the appropriate

competencies including skills, knowledge, attitudes and values and to manage education effectively and efficiently at all levels;

“institution of basic education and training” means a public or private institution or facility used wholly or partly, regularly or periodically for conducting basic education and training and includes a school, a tuition facility, an educational centre, an academy, a research institution, a school correctional facility or a borstal institution;

“Madrassa” means the structural Muslim educational institutions or schools that offer Islamic and other subjects and are laddered from primary to secondary;

“manager” means a person who has been appointed by the Cabinet Secretary in consultation with the proprietor through regulations to coordinate and oversee implementation of education policies and guidelines in non-public basic education institutions and performs delegated teacher management functions;

“mobile school” means a formal flexible institution that allows for mobility of pupils and teachers and is specifically designed to suit the needs of migrant communities;

“National Council for Marginalized and Nomadic Education” means the council provided for under section 92;

“National Education Board” means the National Board for Education and Training established under section 5 of this Act;

“non-formal education” means any organized educational activity taking place outside the framework of the formal education system and targets specific groups/categories of persons with life skills, values and attitudes for personal and community development;

“out-of-school youth” means all persons who have attained the age of eighteen years but have not attained thirty five years and who are not engaged in learning in the formal education system;

“parent” means a mother, father or guardian of a child

and includes any person who is responsible under the law to maintain a child or is entitled to a child's custody;

“parent’s association” means an association as prescribed in subsection 53(2);

“pastoral programmes” means the curriculum designed by different Christian churches;

“pre-primary education” means education offered to a child of four or five years before joining level one in a primary school;

“primary education” means education imparted to a child who has completed pre-primary education;

“Principal” has the meaning assigned to it under the Teachers Service Commission Act;

No.20 of 2012.

“private school” means a school established, owned or operated by private individuals, entrepreneurs and institutions;

No. 10 of 2011.

“Salaries and Remuneration Commission” has the meaning assigned to it under the Salaries and Remuneration Act;

“school” means an institution registered under this Act that meets the basic prescribed standards and includes institutions offering alternative approaches of multi-grade, double-shift, mobile schooling, out of school programmes, adult and continuing education, distance or correspondence instruction, or accelerated learning and talent based institutions, but does not include-

- (a) any institution or assembly for which a Cabinet Secretary other than the Cabinet Secretary responsible for matters relating to basic education and training, is responsible;
- (b) any institution or assembly in which the instruction is, in the opinion of the Cabinet Secretary, wholly or mainly of a religious character; or
- (c) an institution mainly or wholly of a religious character;

“special education needs” means conditions, physical, mental or intellectual conditions with substantial

and long term adverse effects on the learning ability (other than exposure) or the needs of those who learn differently or have disabilities that prevent or hinder or make it harder for them to access education or educational facilities of a kind generally provided for learners of the same age in the formal education system;

“special needs education” includes education for gifted or talented learners as well as learners with disability and includes education which provides appropriate curriculum differentiation in terms of content, pedagogy, instructional materials, alternative media of communication or duration to address the special needs of learners and to eliminate social, mental, intellectual, physical or environmental barriers to learners;

“special school” means a school established for the benefit of a particular class of children who require some special form of education, treatment or care;

“sponsor” means a person or institution who makes a significant contribution and impact on the academic, financial, infrastructural and spiritual development of an institution of basic education;

“stakeholder” means a person, a public or private institution or organization involved in an education institution and with vested interests for the benefit of such an institution;

“statutory structural adjustment” means a systematic multi-disciplinary process of collecting information about learners for the purpose of identifying and confirming the substantial and long-term impact on the learning process, abilities or educational progress so as to provide educational support based on the assessment or findings;

No. 20 of 2012

“teacher” has the meaning assigned to it under the Teachers Service Commission Act;

“tuition fees” means fees charged to cater for instruction or instructional materials.

Application.

**3.** This Act shall apply to all institutions of basic, education under this Act.

**4.** The provision of basic education shall be guided by the following values and principles-

- (a) the right of every child to free and compulsory basic education;
- (b) equitable access for the youth to basic education and equal access to education or institutions;
- (c) promotion of quality and relevance;
- (d) accountability and democratic decision making within the institutions of basic education;
- (e) protection of every child against discrimination within or by an education department or education or institution on any ground whatsoever;
- (f) protection of the right of every child in a public school to equal standards of education including the medium of instructions used in schools for all children of the same educational level
- (g) without prejudice to paragraph (f) above, advancement and protection of every child in pre-primary and lower primary level of education to be instructed in the language of his or her choice where this is reasonably practicable;
- (h) encouraging independent and critical thinking; and cultivating skills, disciplines and capacities for reconstruction and development;
- (i) promotion of peace, integration, cohesion, tolerance, and inclusion as an objective in the provision of basic education;
- (j) elimination of hate speech and tribalism through instructions that promote the proper appreciation of ethnic diversity and culture in society;
- (k) imparting relevant knowledge, skills, attitudes and values to learners to foster the spirit and sense of patriotism, nationhood, unity of purpose, togetherness, and respect;
- (l) promotion of good governance, participation and inclusiveness of parents, communities, private sector and other stakeholders in the development and management of basic education;

- (m) transparency and cost effective use of educational resources and sustainable implementation of educational services;
- (n) ensuring human dignity and integrity of persons engaged in the management of basic education;
- (o) promoting the respect for the right of the child's opinion in matters that affect the child;
- (p) elimination of gender discrimination, corporal punishment or any form of cruel and inhuman treatment or torture;
- (q) promoting the protection of the right of the child to protection, participation, development and survival;
- (r) promotion of innovativeness, inventiveness, creativity, technology transfer and an entrepreneurial culture;
- (s) non-discrimination, encouragement and protection of the marginalised, persons with disabilities and those with special needs;
- (t) 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; and
- (u) provision of appropriate human resource, funds, equipment, infrastructure and related resources that meet the needs of every child in basic education.

## Appendix H: Research findings summary table

FEATURE	BASIC EDUCATION ACT, 2013	CONSTITUTION OF KENYA, 2010	REFERENCE BEA	REFERENCE COK
What is education?	Educational programmes offered and imparted to a person in an institution of basic education	N/A	Article 2	N/A
Types of education	Formal, non Formal, Adult and continuing education, Adult basic education ICT integration and Education	N/A	Article 2	N/A
Where does education take place?	<ul style="list-style-type: none"> <li>Recognised and prescribed schools</li> <li>Cabinet secretary Approved and authorized institutions</li> </ul>	N/A	<p>Article 2 (definitions of types of education)</p> <p>Article 30.1(b)</p> <p>No mention of the family/home as a recognised place where education takes place</p> <p>Article 76 (2) and 78(2) Premises and facilities</p>	N/A
Definition of school	<p>Institution registered under this Act</p> <p>Extended definition of 'school'</p>	N/A	<p>Article 2</p> <p>Article 66(6)</p>	N/A

	Accredited and approved		Article 78(1) and (2)	
Types of schools	Private  Public (including special schools)  Sponsored schools(separated from public school definition in the Basic Education Amendment Bill 2014)	N/A	Article 2 and Article 43	N/A
School differentiation	Madrassa, Mobile schools, Double shift, Distance and correspondence instruction, Accelerated learning, Talent based  Definition excludes any of a religious character and does not include 'homeschooling' in the list.	N/A	Article 2 under definition for 'school'	N/A
<b>FEATURE</b>	<b>BASIC EDUCATION ACT, 2013</b>	<b>CONSTITUTION OF KENYA, 2010</b>	<b>REFERENCE BEA</b>	<b>REFERENCE COK</b>
Recognition of parental right to homeschooling	N/A	<ul style="list-style-type: none"> <li>• International laws that support Home schooling</li> <li>• Bill of Rights freedoms</li> <li>• Manifestations of one's religious convictions and belief including teaching(as individuals or a community)</li> <li>• Academic freedom</li> </ul>	Article 30 (4) allows for exemption from attendance of prescribed schools(reasonable)	Article 2(5) and (6)recourse to International treaties that Kenya has ratified  Article 27(4) Discrimination recourse  Article 32(1-4)

				Article 33(c)
Parental rights in education	<ul style="list-style-type: none"> <li>• Development and management of basic education</li> <li>• Participation in the character development of their child</li> <li>• Punitive (imprisonment and fining) where parent fails to take the child to the prescribed (or otherwise authorised education institutions) schools.</li> <li>• Participation in the holding back and expulsion of pupils</li> <li>• Inclusion of county board management</li> <li>• Religious values in line with National values and Chapter 6 of the COK</li> <li>• Child rights as per international instruments e.g. Convention for the Rights of the Child</li> <li>• Parents association schedule</li> <li>• International instruments in support of right to direct and choose education of the children</li> </ul>	<p>State cannot grant this right</p> <p>Child's rights to free and compulsory education</p> <p>A child's best interests are of paramount importance in every matter concerning the child</p> <p>A child has right to parental care and protection, mother and father to provide for the child</p>	<p>Article 4(i)</p> <p>Article 31(3)</p> <p>Article 30(1-3)</p> <p>Art 35(6) holding back and expulsion of pupils</p> <p>Article 56.1(a) board of management inclusion of parents</p> <p>Article 95.3(1)</p> <p>Article 95.3(n)Child rights and international treaties</p> <p>Third Schedule(Parents associations)</p>	<p>Article 19.3(a)</p> <p>Article 53.1(b)</p> <p>Article 53(2)</p> <p>Article 53.2(e)</p>

FEATURE	BASIC EDUCATION ACT, 2013	CONSTITUTION OF KENYA, 2010	REFERENCE BEA	REFERENCE COK
Role of state in education	Implement free and compulsory education, curriculum development and approval, development and audit of education standards, overall national and county representation and overseeing, governance and management of basic education institutions including annual report from the basic education institutions, classification and approval of institutions of basic education (including licensing, registration and accreditation), promotion and structure of education (including approval for school conversation)	N/A	Article 39 (a-j)  Article 5, 18  Article 53, 74,75 and 82  Article 41,42 and 43  Role of UNICEF in schools?-Article 95.2(f)	