

# MIDLANDS STATE UNIVERSITY



MIDLANDS STATE UNIVERSITY

FACULTY OF LAW

THE RIGHT TO INCLUSIVE EDUCATION FOR CHILDREN WITH VISUAL  
IMPAIRMENTS IN PRIMARY SCHOOLS OF ZIMBABWE

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R167453C

A DISSERTATION SUBMITTED TO THE FACULTY LAW, MIDLANDS STATE  
UNIVERSITY, IN PARTIAL FULFILMENT TO THE REQUIREMENTS FOR THE  
MASTERS OF LAWS DEGREE IN CONSTITUTIONAL AND HUMAN RIGHTS LAW

2018

## DISSERTATION SUBMISSION APPROVAL FORM

**Degree Programme: LLM Constitutional and Human Rights Law**

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### DECLARATION

I, MERCY T. NYAMUTSWA declare that this dissertation represents my own work and it has not been previously submitted for a degree at this or another University.

Signed: \_\_\_\_\_

Date: \_\_\_\_\_

**DEDICATIONS**

To me.

### **ACKNOWLEDGEMENTS**

I would like to thank God for always being my pillar of strength. Mrs Mapuva, my supervisor, I can never thank you enough, you are a star!

## **LIST OF ACRONYMS**

1. ACHPR: African Charter on Human and Peoples' Rights
2. ACRWC: African Charter on the Rights and Welfare of the Child
3. CRC: Convention on the Rights of the Child

4. CRPD: Convention on the Rights of Persons with Disabilities
5. CWDs: Children With Disabilities
6. DPA: Disabled Persons Act
7. ICESCR: International Covenant on Economic, Social and Cultural Rights
8. NDB: National Disability Board
9. LWDs: Learners with Disabilities
10. PWDs: Persons with Disabilities
11. UNESCO Convention Against Discrimination in Education: United Nations Educational, Scientific and Cultural Organisation UNESCO Convention Against Discrimination in Education
12. UDHR: Universal Declaration of Human Rights
13. UN Charter: United Nations Charter

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## **ABSTRACT**

This study ventures into the right to inclusive education for children with visual impairments in primary schools of Zimbabwe. This will be done to establish whether or not Zimbabwe is in conformity with the international standards set by the Convention on the Rights of Persons with Disabilities (CRPD) to which Zimbabwe is a party. The study explores the international and regional frameworks on the right to education. The study further explores the national framework of Zimbabwe on the right to education and juxtaposes it with the CRPD to establish whether Zimbabwe is in conformity with international standards. In addition, the study provides a situational analysis of Zimbabwe and South Africa on the right to inclusive education for children with visual impairments in primary schools to expose the gaps in the education system of Zimbabwe and to show that on the other hand, South Africa has the best laws and policies on inclusive education to cater for children with visual impairments in primary schools. Lastly, the writer outlines the findings and conclusions of the study and proceeds to proffer recommendations.

## CHAPTER 1: INTRODUCTION

### 1.1 BACKGROUND

According to a report by the World Health Organisation and the World Bank<sup>1</sup>, there are one billion people the world over who are living with some form of disability. In terms of the said report, it is estimated that children with disabilities (CWDs) range between ninety-three million to one hundred and fifty million.<sup>2</sup> The United Nations Enable<sup>3</sup> has also noted that CWDs are among the ten percent of the world's population of persons with disabilities (PWDs). In terms of the report by the United Nations Enable,<sup>4</sup> CWDs are marginalised in their attainment of education.

Historically, in Zimbabwe CWDs were perceived as a burden to the extent that some parents of these children contemplated killing them to ease the burden on the family.<sup>5</sup> Children with visual impairments were kept out of school mainly because many schools, especially in the

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<sup>1</sup> WHO & World Bank 'World Report on disability' (2011) xi <http://www.who.int> (accessed 4 May 2018)

<sup>2</sup> WHO & World Bank (n 1 above) 205

<sup>3</sup> United Nations Enable 'Fact Sheet on Persons with Disabilities' (2012) <http://www.un.org> (accessed 1 March 2018)

<sup>4</sup> United Nations Enable 'Fact sheet on Persons with Disabilities' (n 3 above)

<sup>5</sup> National Association of Societies for the Care of the Handicapped (NASCOH) 'Copota School for the Blind forerunner of disability empowerment' (2007) <http://www.kubatana.net> (accessed 1 April 2018).

rural areas, had a tendency of refusing to enrol them as they lacked facilities and infrastructure to cater for their special needs.<sup>6</sup> Even though education is essential to one's life, some parents of children with visual impairments chose not to send them to school.<sup>7</sup> With the passage of time, children with visual impairments were being enrolled at their nearest primary schools but this was ineffective as there were no facilities to fully accommodate them.<sup>8</sup> The promulgation of the Education Act in 1987 introduced education "for all"<sup>9</sup> and was a milestone achievement. However, CWDs including children with visual impairments still failed to attend primary schools due to lack of adequate facilities for their learning purposes.

Today, children with visual impairments in primary schools are generally educated through separate special schools usually depending on their disabilities. These schools include the Jairos Jiri School for the Blind, the Copota School for the Blind, St Giles Primary School which caters for children with all forms of disabilities and Bondolfi Central Primary School which specifically enrol children with visual impairments together with children without any disabilities. Such institutions provide education at very expensive rates which are out of reach to ordinary parents or guardians of children with visual impairments. In addition, educating children with visual impairments in separate schools isolates these children from their families and communities.<sup>10</sup>

In Zimbabwe, the Constitution and other pieces of legislation govern the rights of CWDs including children with visual impairments. Zimbabwe has also ratified the Convention on the Rights of Persons with Disabilities (CRPD)<sup>11</sup> and its Optional Protocol.<sup>12</sup> In terms of the

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<sup>6</sup> National Association of Societies for the Care of the Handicapped (NASCOH) (n 5 above)

<sup>7</sup> WHO & World Bank (n1 above) 205

<sup>8</sup> This also saw the establishment of special schools such Copota School for the Blind in 1915 and the subsequent establishment of other special schools such as the Jairos Jiri School for the Blind in Kadoma.

<sup>9</sup> Section 4 of the Education Act [Chapter 25:04]

<sup>10</sup> WHO & World Bank (n1 above) 205

<sup>11</sup> UN General Assembly, *Convention on the Rights of Persons with Disabilities*: resolution/adopted by the General Assembly, 24 January 2007, A/RES/61/106 <http://www.refworld.org> (accessed 13 August 2018)

provisions of the CRPD, Zimbabwe is under an obligation to provide inclusive primary education for all including children with visual impairments.<sup>13</sup> The State has a duty to ensure that children with visual impairments attend mainstream primary schools to attain their education in an inclusive environment. It is against this background that this study seeks to analyse the right to inclusive education for children with visual impairments in primary schools of Zimbabwe.

## 1.2 PROBLEM STATEMENT

All children, including those with visual impairments, have a right to inclusive education. However, some children with visual impairments do not attend school. In most cases, they are forced to attend separate special schools because mainstream schools do not have facilities to cater for their special needs. These special schools are expensive and most parents or guardians of children with visual impairments cannot afford them due to poverty. Separate special schools instil a sense of stigmatisation and inferiority. In addition, separate special schools use a different curriculum from that used in mainstream schools. When they get older, children with visual impairments are forced to compete for employment and other opportunities on the same level with their visually acute counterparts who would have attained a different quality of education. In a democratic society, all children including those with visual impairments should be able to attain quality education without discrimination.

## 1.3 RESEARCH QUESTION

Whether children with visual impairments are realising their right to inclusive primary education in Zimbabwe?

### **This research will be guided by the following research objectives:**

1. To examine the Zimbabwean legal framework that regulates the right to inclusive primary education for children with visual impairments.
2. To explore the scope and extent of the right to inclusive primary education for children with visual impairments at regional and international levels.
3. To conduct a comparative situational analysis of the right to inclusive primary education for children with visual impairments in Zimbabwe and South Africa.

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<sup>12</sup> UN General Assembly, *Optional Protocol to the Convention on the Rights of Persons with Disabilities*: resolution/adopted by the General Assembly, 13 December 2006, A/RES/61/106 <http://www.refworld.org> (accessed 13 August 2018)

<sup>13</sup> Article 24 (2) (a) (b) of the CRPD

#### 1.4 METHODOLOGY

This study seeks to establish whether or not children with visual impairments are realising their right to inclusive primary education in Zimbabwe. It examines the constitutional, legislative, policy and institutional frameworks on the right to inclusive education in Zimbabwe to establish whether or not they match international standards set by the CRPD. It further conducts a situational analysis of the Zimbabwean and South African's legislative and policy frameworks on the realisation of inclusive education for children with visual impairments in primary schools of Zimbabwe. To compile the study, reliance is placed on literature-based or library-based method of research. This method enables one to gather and analyse the statutes of Zimbabwe which deal with the right to education for visually impaired children in primary schools. Thus, the study embarks on a critical and intensive analysis of the Constitution of Zimbabwe, Acts of Parliament, international and regional human rights instruments, general comments, journals, case law, internet sources and other relevant materials to the study. Recommendations are proffered at the end of the study.

#### 1.5 SIGNIFICANCE OF THE STUDY

This study is significant in that it seeks to establish the scope and extent of the right to inclusive education and whether or not Zimbabwe has ensured full realisation of this right. It seeks to examine the national legislation of Zimbabwe to establish if it meets the international standards on the right to inclusive primary education for visually impaired children. By conducting this research, gaps in the national laws, if any, will be addressed and this might necessitate the realignment of the national laws with international instruments such as the CRPD for the benefit of visually impaired children. The outcome of this study might also facilitate the establishment of conducive learning conditions in primary schools by the government to enable the enjoyment of primary education to visually impaired children. This study will also benefit academics, researchers and the general populace as the scope and extent of the right to inclusive education for children with visual impairments will be established. Non-governmental organisations that deal with the rights of PWDs will also benefit and will in turn probe the government to realign the laws to match international standards and to establish an inclusive primary education system to accommodate the visually impaired children.

#### 1.6 LIMITATIONS TO THE STUDY

This study had shortcomings in its compilation. These shortcomings include lack of adequate sources of law to compile the study. These sources include textbooks and journals from the

internet. Lack of textbooks and researched articles may be attributed to the fact that the area of disability rights law is still very new in Zimbabwe and not much research has taken place in that area.

In addition, lack of financial resources also limited this study. This is because the writer could not afford to purchase some of the most useful and well-researched journal articles on disability from the internet. The availability of the said journal articles would have enabled the study to be more informed. Financial constraints also made it difficult for the writer to visit separate special schools such as the Copota School for the Blind in Masvingo, St Giles, Jairos Jiri School and Bondolfi Central Primary School to experience how children with visual impairments in these schools attain their education.

It should also be noted that the study was affected by time constraints. This is because the study was compiled in a short space of time yet there was need to encompass a lot of activities. In addition, technology also limited this study. It was noted that most of the information available on websites of the Ministry of Primary and Secondary Education is not up to date. Sometimes the websites themselves are unavailable yet one should be able to access relevant information there.

## 1.7 CHAPTER SYNOPSIS

### **Chapter 1**

This chapter contains the introduction, background, problem statement, research question, methodology, significance of the study, limitations of the study and a chapter synopsis.

### **Chapter 2: International and Regional Framework**

This chapter explores the international and regional frameworks on the right to education by firstly examining the provisions of the regional and international instruments as well as the soft law that preceded the Convention on the Rights of Persons with Disabilities (CRPD) in as far as the right to inclusive education is concerned. Lastly, the chapter explores the right to inclusive education as provided for by the CRPD.

### **Chapter 3: Zimbabwe's National Framework**

This chapter outlines Zimbabwe's national framework which supports the right to inclusive education for children with visual impairments in primary schools in Zimbabwe. It juxtaposes Zimbabwe's national framework with the CRPD to establish whether or not Zimbabwe is in

conformity with international standards on inclusive education for children with visual impairments in primary schools.

#### **Chapter 4: A situational analysis of Zimbabwe and South Africa on inclusive education of children with visual impairments in primary schools.**

This chapter analyses the manner in which the right to inclusive education is being realised by children with visual impairments in Zimbabwean primary schools and compares it with South Africa.

#### **Chapter 5: Findings, conclusions and recommendations**

This chapter outlines the findings, conclusions and recommendations of the study.

## CHAPTER 2: INTERNATIONAL AND REGIONAL FRAMEWORKS

### 2.1 INTRODUCTION

The previous chapter introduced the area of study of this dissertation by unpacking what the research is all about. It outlined the introduction and background of the study, the research question and objectives, the significance of the study, methodology, limitations of the study, problem statement and a chapter synopsis. This chapter discusses the regional and international framework on the right to inclusive education. The writer firstly focuses on the international and regional instruments as well as the soft laws that preceded the Convention on the Rights of Persons with Disabilities (CRPD).<sup>14</sup> Soft law includes Declaration on the Rights of Mentally Retarded Persons, the Declaration on the Rights of Disabled Persons and the Declaration on Social Progress and Development. Under the international instruments, the writer explores the Universal Declaration of Human Rights (UDHR),<sup>15</sup> the International Covenant on Economic, Social and Cultural Rights (ICESCR),<sup>16</sup> and the United Nations

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<sup>14</sup> UN General Assembly, *Convention on the Rights of Persons with Disabilities*: resolution/adopted by the General Assembly, 24 January 2007, A/RES/61/106 <http://www.refworld.org> (accessed 13 August 2018)

<sup>15</sup> UN General Assembly, *Universal Declaration of Human Rights*, 10 December 1948, 217 A (III), available at <http://www.refworld.org/docid/3ae6b3712c.html> (accessed 7 May 2018)

<sup>16</sup> UN General Assembly, *International Covenant on Economic, Social and Cultural Rights*: 16 December 1966 <http://www.refworld.org> (accessed 7 May 2018)

Convention on the Rights of the Child (CRC).<sup>17</sup> Under the regional instruments, focus is placed on the African Charter on Human and Peoples' Rights (ACHPR) and the Africa Charter on the Rights and Welfare of the Child (ACRWC).<sup>18</sup>

## 2.2 INTERNATIONAL NORMS PERTAINING TO CHILDREN WITH DISABILITIES

### 2.2.1 INTERNATIONAL INSTRUMENTS PRECEDING THE CONVENTION ON THE RIGHTS OF PERSONS WITH DISABILITIES

Before the establishment of the United Nations (UN), the League of Nations<sup>19</sup> provided for a basic human rights framework including the promotion of the rights of minorities such as PWDs.<sup>20</sup> Following the formation of the UN in 1945, human rights were regarded as one of the core goals of the organisation as deeply enunciated by the United Nations Charter.<sup>21</sup> It provides for the promotion and observance of human rights without distinction.<sup>22</sup> In 1948, the UN adopted the United Declaration on Human Rights (UDHR)<sup>23</sup> which formed the fundamental basis on which the international norms and standards concerning PWDs were founded. The UDHR provides for the right to equality and dignity<sup>24</sup>, the right to life,<sup>25</sup> the

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<sup>17</sup> UN General Assembly, Convention on the Rights of the Child, 20 November 1989, United Nations, Treaty Series, vol. 1577, p.3, available at: <http://www.refworld.org/docid/3ae6b38f0.html> (accessed 7 May 2018)

<sup>18</sup> Organisation of the African Unity (OAU), African Charter on the Rights and Welfare of the Child, 11 July 1990, CAB/LEG/24.9/49 (1990) available at <http://www.refworld.org/docid/3ae6b38c18.html> (accessed 7 May 2018)

<sup>19</sup> It was formed in 1920 as a result of the Paris Conference that ended the First World War

<sup>20</sup> United Nations Department of Economic and Social Affairs 'United Nations and Disability: 70 years of the work towards a more inclusive world' 5 <http://www.un.org> (accessed 7 May 2018)

<sup>21</sup> United Nations Charter of the United Nations, 24 October 1945, UNTS XV1 <http://www.un.org> (accessed 7 May 2018)

<sup>22</sup> Articles 1 (3), 13 (1) (b) and 55 (a) of the United Nations Charter

<sup>23</sup> Universal Declaration of Human Rights (n 15 above)

<sup>24</sup> Article 1 of the UDHR

<sup>25</sup> Articles 3 and 6 of the UDHR

right to equality before the law<sup>26</sup> and the right to education for all.<sup>27</sup> Although the UDHR made reference to disability, it conceptualised disability as a condition as opposed to status.<sup>28</sup> It also failed to mention the issue of education for children with visual impairments and CWDs in general. However, this move paved way for the core principle of equality for all and provided a positive move towards the realisation of the rights of PWDs. In 1950, the International Labour Organisation (ILO), the World Health Organisation (WHO) and the United Nations Children’s Fund (UNICEF) established international standards for the education, treatment and placement of PWDs and this further shifted focus in the way disability was considered.<sup>29</sup> This was a progressive move as it resulted in a shift in the way PWDs were perceived. PWDs were now being considered as people entitled to exercise rights as opposed to objects of charity. However, nothing was done towards the right to inclusive education which is based on the principle that all children should learn together, regardless of their differences, taking into account each individual’s different strengths, requirements, and learning styles.<sup>30</sup> In 1960, the United Nations Educational, Scientific and Cultural Organisation Convention against Discrimination in Education (UNESCO) (CADE)<sup>31</sup> was adopted and it became the first legally binding international instrument that laid out the core elements of the right to education. The (UNESCO) (CADE) prohibits discrimination in education<sup>32</sup> and outlines the principle of equality of educational opportunities.<sup>33</sup> It advocates for States to develop and apply a national policy which promotes equality of opportunity and of treatment in education at all levels without discrimination especially towards the

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<sup>26</sup> Article 7 of the UDHR

<sup>27</sup> Article 26 of the UDHR

<sup>28</sup> Article 25 of the UDHR states that “everyone has the right to a standard of living adequate for the health and well-being of himself and his family...and the right to security in the event of sickness... disability.”

<sup>29</sup> United Nations Department of Economic and Social Affairs (n 20 above) 6

<sup>30</sup> General Comment 4 of the CRPD paragraph 71

<sup>31</sup> *UN Educational, Scientific and Cultural Organisation (UNESCO) Convention Against Discrimination in Education*, 14 December 1960 <http://www.refworld.org> (accessed 7 May 2018)

<sup>32</sup> Article 1 (a) of the UNESCO Convention against Discrimination in Education (n 31 above)

<sup>33</sup> The Constitutional mandate of the UNESCO Convention against Discrimination in Education advocates for full and equal opportunities in education for all

vulnerable groups of people such as PWDs.<sup>34</sup> UNESCO also adopted international standard setting instruments which further considered the aspects of education.<sup>35</sup>

Although the UNESCO CADE was a paradigm shift, it did not provide for the right to inclusive education. The UN further adopted more human rights treaties to uphold human rights ‘for all’ and the right to education. Of notable importance is the International Covenant on Economic, Social and Cultural Rights (ICESCR).<sup>36</sup> The United Nations Department of Economic and Social Affairs has termed the ICESCR and the UDHR the International Bill of Rights.<sup>37</sup>

The ICESCR advocates for equality for all in relation to the enjoyment of socio-economic rights of which education is one.<sup>38</sup> It addresses the right to education for everyone to ensure the full development of human personality.<sup>39</sup> It further provides for the right to free and compulsory primary education for all.<sup>40</sup> It is notable that the ICESCR considers education as a human right.<sup>41</sup> The Committee on the ICESCR<sup>42</sup> stipulated that education needs to be accessible, adaptable, available and acceptable.<sup>43</sup> Although the ICESCR addressed the right to education for all, it did not include the issue of inclusive education. It should be noted that although the ICESCR alongside the UDHR advocated for human rights, disability remained

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<sup>34</sup> Article 4 of the UNESCO Convention against Discrimination in Education (n 31 above)

<sup>35</sup> It adopted the UNESCO’ Convention on Technical and Vocational Education which states that contracting States shall pay attention to the special needs of the handicapped and other disadvantaged groups and take appropriate measures to enable these groups to benefit from technical and vocational education.

<sup>36</sup> UN General Assembly, International Covenant on Economic, Social and Cultural Rights ( n 16 above)

<sup>37</sup> United Nations Department of Economic and Social Affairs (n 20 above) 11

<sup>38</sup> Article 3 of the ICESCR

<sup>39</sup> Article 13 (1) of the ICESCR

<sup>40</sup> Article 13 (2) (a) of the ICESCR

<sup>41</sup> General Comment 13 of the ICESCR paragraph 1

<sup>42</sup> UN Committee on Economic, Social and Cultural Rights (CESCR), *UN Committee on Economic, Social, and Cultural Rights: Concluding Observations, Canada*, 22 May 2006 <http://www.refworld.org> (accessed 12 October 2018)

<sup>43</sup> General Comment 13 by the ICESCR paragraph 6 (a-d)

as a condition that was not given huge consideration in the context of social protection, welfare and rehabilitation.<sup>44</sup> The advent of the ICESCR and the UDHR saw no recognisance of the right to inclusive education for PWDs let alone children with visual impairments.

### 2.2.2 SOFT LAWS THAT PRECEDED THE CONVENTION ON THE RIGHTS OF PERSONS WITH DISABILITIES

In 1969, the United Nations General Assembly (UNGA) adopted the Declaration on Social Progress and Development,<sup>45</sup> which emphasised the need to protect the rights and welfare of PWDs and calling for their full participation in society.<sup>46</sup> Again, there was no provision on the right to inclusive education for children with visual impairments. The 1970s further saw the adoption of the Declaration on the Rights of the Mentally Retarded Persons<sup>47</sup> and the Declaration on the Rights of Disabled Persons.<sup>48</sup> The 1971 Declaration on the Rights of Mentally Retarded Persons represented significant awareness of persons with intellectual disabilities and the importance of education for PWDs in order to fully realise their potential. The 1971 Declaration on the Rights of Mentally Retarded Persons however retained the medical model approach to disability and in some parts referred to PWDs as reliant on social security and welfare.<sup>49</sup>

In addition, the 1971 Declaration on the Rights of Mentally Retarded Persons did not encompass the issue of inclusive education. The 1975 Declaration on the Rights of Disabled Persons further did nothing for the promotion of the right to inclusive education. It however promoted social integration for PWDs on the basis of their inherent right to dignity and human rights setting standards for equal treatment and accessibility to services. The 1975 Declaration on the Rights of Disabled Persons reflected a great transition from a medical

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<sup>44</sup> The UNGA, Economic and Social Council and its subsidiary organs promoted the well-being of PWDs through technical co-operation, rehabilitation and vocational programmes

<sup>45</sup> UN General Assembly, *Declaration on Social Progress and Development*, 11 December 1969, A/RES/2542 (XXIV) <http://www.refworld.org> (accessed 12 May 2018)

<sup>46</sup> Declaration on Social Progress and Development, (n 45 above)

<sup>47</sup> Declaration on the Rights of Mentally Retarded Persons, G.A. Res. 2856 (XXVI), at 93, U.N. GAOR, Supp. <http://www.un.org> (accessed 7 May 2018)

<sup>48</sup> Declaration on the Rights of Disabled Persons, GA, res.3447 (XXX) <http://www.ohchr.org> (accessed 10 May 2018)

<sup>49</sup> Declaration on the Rights of Mentally Retarded Persons (n 47 above) 2

model approach to PWDs to the human rights approach and later led to the establishment of the World Programme on Action concerning the Disabled Persons. In 1993, the United Nations further adopted the Standard Rules on the Equalisation of Opportunities for Persons with Disabilities which served as guidance for policy-making.

Although the soft laws did not provide for the right to inclusive education, they paved way for the development of international standards on the right to inclusive education. In addition, soft laws led to the advancement of the right to education for PWDs at global, regional and national levels including the possibility of promoting an international instrument on the right to education for PWDs.

## 2.3 THE UNITED NATIONS CONVENTION ON THE RIGHTS OF THE CHILD (UNCRC)

The United Nations Convention on the Right of the Child (UNCRC)<sup>50</sup> is a human rights instrument that deals with children's rights on the global level. It encompasses the civil, political, economic, humanitarian and cultural rights. The CRC is therefore a foundation in children's rights as it binds all the States that have ratified it to give priority to realising the rights of children in general.<sup>51</sup> The rights under the CRC apply equally to all children.<sup>52</sup> Of particular importance are Article 2, Article 23 and 28 of the CRC and these will be discussed in detail below focusing mainly on their application to children with visual impairments.

### 2.3.1 GUARANTEES FOR NON-DISCRIMINATION

The CRC prohibits discrimination on any grounds including disability.<sup>53</sup> This provision promotes the right to education for CWDs including children with visual impairments as it

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<sup>50</sup>UN General Assembly, *Convention on the Rights of the Child*, 20 November 1989, United Nations, Treaty Series <http://www.refworld.org/docid/3ae6b38f0.html> (accessed 12 August 2018)

<sup>51</sup> V De Blanc 'Implementation of the 1989 Convention on the Rights of the Child and the Work on the United Nations High Commission' in Ghent Papers on Children's Rights (1996) 403

<sup>52</sup> H Combrinck 'The hidden ones: Children with Disabilities in Africa and education' in Julia Sloth-Nielsen (Ed) *Children's rights in Africa* (2008) 66

<sup>53</sup> Article 2 of the CRC

ensures they enjoy the right to education on an equal basis with other children.<sup>54</sup> Jones opines that discrimination on the basis of any grounds undermines the child's capacity to benefit from educational opportunities.<sup>55</sup> The CRC<sup>56</sup> enjoins State parties to review their legislation to ensure the abolition of direct and indirect discrimination in the law. The abolition of discrimination enables children with visual impairments to fully enjoy their right to education. The CRC<sup>57</sup> therefore calls upon States to promulgate laws that ensure that children with visual impairments have access to the same curriculum and opportunities in education.<sup>58</sup> In addition, the CRC<sup>59</sup> protects children with visual impairments and other CWDs from discrimination by calling upon State parties to ensure that every child is protected against all forms of discrimination based on the status, opinions or beliefs of the child's parents or guardians.<sup>60</sup> This provision ensures that children with visual impairments can access education regardless of how their parents perceive disability. The right to non-discrimination is not a passive obligation but it requires appropriate proactive measures by the State to ensure effective equal opportunities for children to enjoy their rights.<sup>61</sup>

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<sup>54</sup> R Hodgkin and P Newell *Implementation Handbook for the United Nations Convention on the Rights of the Child* (2007) 320

<sup>55</sup> H Jones 'Disabled Children's Rights and the UNCRC' (2000) Vol 20 *Disability Studies Quarterly* 6

<sup>56</sup> UN General Assembly, *Convention on the Rights of the Child*, 20 November 1989, United Nations, Treaty Series, vol. 1577, p. 3, <http://www.refworld.org/docid/3ae6b38f0.html> (accessed 12 August 2018)

<sup>57</sup> UN General Assembly, *Convention on the Rights of the Child*, 20 November 1989, United Nations, Treaty Series, vol. 1577, p. 3, <http://www.refworld.org/docid/3ae6b38f0.html> (accessed 12 October 2018)

<sup>58</sup> H Jones (n 55 above) 6

<sup>59</sup> UN General Assembly, *Convention on the Rights of the Child*, 20 November 1989, United Nations, Treaty Series, vol. 1577, p. 3, <http://www.refworld.org/docid/3ae6b38f0.html> (accessed 12 August 2018)

<sup>60</sup> Article 2 (2) of the CRC

<sup>61</sup> General Comment 14 by the CRC Committee paragraph 41

### 2.3.2 GUARANTEES FOR CHILDREN WITH DISABILITIES

The CRC<sup>62</sup> promotes and protects the rights of CWDs.<sup>63</sup> It obligates State parties to ensure that mentally and physically disabled children enjoy a full and decent life in conditions that promote dignity and self-reliance.<sup>64</sup> State parties are further obligated to provide free special care to a CWD, subject to availability of resources.<sup>65</sup> This is to ensure that a CWD has access to education in an environment that is conducive so that they achieve individual development and social integration.<sup>66</sup>

Although children with mental and physical disabilities are entitled to special care, this can only be done subject to the availability of resources.<sup>67</sup> There is no mention of how the right is to be secured.<sup>68</sup> In addition, the CRC<sup>69</sup> alludes to children with mental and physical disabilities only, therefore children with visual or any other sensory impairments do not have protection under this provision.<sup>70</sup> One may therefore argue that children with visual impairments may not be able to seek assistance for their special needs under Article 23 (3) as the provision applies to mentally and physically disabled children only.<sup>71</sup>

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<sup>62</sup> UN General Assembly, *Convention on the Rights of the Child*, 20 November 1989, United Nations, Treaty Series, vol. 1577, p. 3, <http://www.refworld.org/docid/3ae6b38f0.html> (accessed 12 August 2018)]

<sup>63</sup> Article 23 may be read together with Article 2 which prohibits discrimination

<sup>64</sup> Article 23 (1) of the CRC

<sup>65</sup> Article 23 (2) and (3) of the CRC

<sup>66</sup> Article 23 (3) of the CRC

<sup>67</sup> Article 23 (2) of the CRC

<sup>68</sup> K Kilkelly '*Disability and children: The Convention on the Rights of the Child*' in G Quinn and T Degener (Eds) *Human Rights and Disability: The current use and future potential of United Nations instruments in the context of disability* (2002) 193

<sup>69</sup> UN General Assembly, *Convention on the Rights of the Child*, 20 November 1989, United Nations, Treaty Series, vol. 1577, p. 3, <http://www.refworld.org/docid/3ae6b38f0.html> (accessed 12 August 2018)

<sup>70</sup> Article 23 (1) of the CRC

<sup>71</sup> K Kilkelly '*Disability and children: The Convention on the Rights of the Child*' in G Quinn and T Degener (n 68 above) 196

### 2.3.3 GUARANTEES FOR THE CHILDREN'S RIGHT TO EDUCATION

The CRC<sup>72</sup> establishes the right to education for every child<sup>73</sup> to ensure the personal development of the child's personality, mental and physical abilities.<sup>74</sup> Articles 2 and 28 complement each other by emphasising that education must be availed to every child on an equal and non-discriminatory basis. The CRC<sup>75</sup> outlines that education should be made available and accessible on an equal basis.<sup>76</sup> This protects the right to education for children with visual impairments.<sup>77</sup> The CRC<sup>78</sup> further states that primary education should be free and compulsory<sup>79</sup> and that State parties must take measures to ensure regular attendance at school so as to minimize drop outs.<sup>80</sup> States must ensure primary school attendance through the provision of transport services and food to children with visual impairments and all the CWDs.<sup>81</sup> Article 28 (1) (e) of the CRC is a progressive provision especially considering the higher numbers of primary school dropouts by children with visual impairments due to poverty.<sup>82</sup> States are encouraged to make necessary adjustments so as to minimize dropouts. States are also required to ensure both formal equality and substantive equality in education.<sup>83</sup>

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<sup>72</sup> UN General Assembly, *Convention on the Rights of the Child*, 20 November 1989, United Nations, Treaty Series, vol. 1577, p. 3, available at: <http://www.refworld.org/docid/3ae6b38f0.html> [accessed 12 August 2018]

<sup>73</sup> Article 28 of the CRC

<sup>74</sup> Article 29 of the CRC

<sup>75</sup> UN General Assembly, *Convention on the Rights of the Child*, 20 November 1989, United Nations, Treaty Series, vol. 1577, p. 3, <http://www.refworld.org/docid/3ae6b38f0.html> (accessed 12 August 2018)

<sup>76</sup> Article 28 of the CRC

<sup>77</sup> Article 28 (1) of the CRC

<sup>78</sup> UN General Assembly, *Convention on the Rights of the Child*, 20 November 1989, United Nations, Treaty Series, vol. 1577, p. 3, <http://www.refworld.org/docid/3ae6b38f0.html> (accessed 12 August 2018)

<sup>79</sup> Article 28 (1) (a) of the CRC

<sup>80</sup> Article 28 (1) (e) of the CRC

<sup>81</sup> K Tomasevki *Free and compulsory education for all children: the gap between promise and performance* (2001) 13

<sup>82</sup> Hodgkin & Newell (n 54 above) 320

<sup>83</sup> M Verheyde 'Article 28: The right to education' in A Allen 'A commentary on the United Nations Convention on the Rights of the Child' (2006) 36

Substantive equality requires that there should be affirmative action policies to enhance the right to education.<sup>84</sup>

An education system must thus take into consideration the best interests of children with visual impairments.<sup>85</sup> There is need to take into account the nature of teaching, the content of the curriculum and the learning environment which should be open to visually impaired children.<sup>86</sup> The Committee on the CRC<sup>87</sup> has noted that visually impaired children should not be just integrated into the mainstream schools without the necessary support system.<sup>88</sup> The State must therefore ensure the realisation of the right to primary education.<sup>89</sup> Services and programmes for children with visual impairments should be a priority in resource allocation.<sup>90</sup> The Committee on the CRC<sup>91</sup> stressed that States should strive to ensure the widest possible enjoyment of the right to education under prevailing circumstances and adequate funds must be allocated to CWDs including children with visual impairments.<sup>92</sup> States are therefore obliged to fund educational programmes for children with visual impairments in the mainstream educational system.<sup>93</sup> It should however be noted that although Article 28 addresses the right to free and compulsory education, it does not fully advocate for an inclusive education system. As a result, children with visual impairments

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<sup>84</sup> M Verheyde 'Article 28: The right to education' in A Allen (n 83 above) 36

<sup>85</sup> K Kilkelly 'Disability and children: The Convention on the Rights of the Child' in G Quinn and T Degener (n 68 above) 193

<sup>86</sup> UNESCO (2007)

<sup>87</sup> UN Committee on the Rights of the Child (CRC), *General Comment NO. 9 (2006): The rights of children with disabilities*, 27 February 2007, CRC/C/GC/9 <http://www.refworld.org> (accessed 5 September 2018)

<sup>88</sup> General Comment 9 of the CRC paragraphs 66-67

<sup>89</sup> This means that State parties were supposed to take all the steps as soon as possible after the entry into force of the CRC

<sup>90</sup> M Verheyde 'Article 28: The right to education' in A Allen (n 83 above) 23

<sup>91</sup> UN Committee on the Rights of the Child (CRC), *General Comment NO. 5 (2003): General measures of implementation of the Convention on the Rights of the Child*, 27 November 2003, CRC/GC/2003/5 <http://www.refworld.org> (accessed 5 September 2018)

<sup>92</sup> General Comment 5 of the CRC paragraph 66

<sup>93</sup> H Combrinck 'The hidden ones: Children with Disabilities in Africa and education' in Julia Sloth-Nielsen (n 52 above) 67

remain marginalised. Hodgkin and Newell have however noted that Article 23 (3) may be construed to be an inclination towards inclusive education<sup>94</sup> as it provides that every child must receive education in a conducive manner.<sup>95</sup> This implies that children with visual impairments may be able to attain education in mainstream schools and States are obliged to provide a conducive environment to ensure full realisation of the right.

Although the UDHR, the ICESCR and the CRC address the right to education of CWDs including children with visual impairments, they however fall short as they do not encompass the human rights model to disability. The instruments do not make provision for the right to inclusive education. To close this gap, the international community has adopted the CRPD to address the right to inclusive education for CWDs including children with visual impairments.

**2.4 THE CONVENTION ON THE RIGHTS OF PERSONS WITH DISABILITIES (CRPD)**  
The CRPD is the first instrument to exclusively deal with the right to inclusive education.<sup>96</sup> It clarifies, consolidates and strengthens the already existing system by the preceding human rights instruments.<sup>97</sup> The CRPD offers greater protection to visually impaired children by endorsing the social model of disability that recognises disability as a result of the interaction between persons with impairments and attitudinal and environmental barriers.<sup>98</sup> Children with visual impairments are recognised as rights holders under the CRPD.<sup>99</sup> The CRPD obliges States to ensure that CWDs enjoy all human rights and fundamental freedoms on an equal footing with others.<sup>100</sup> The provisions of the CRPD apply equally to CWDs.<sup>101</sup>

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<sup>94</sup> Hodgkin & Newell (n 54 above) 320

<sup>95</sup> Article 23 (3) of the CRC

<sup>96</sup> See Article 24 of the CRPD

<sup>97</sup> D Mackay 'The United Nations Convention on the Rights of Persons with Disabilities' (2007) Vol 34 *Syracuse Journal of International Law and Commerce* 323

<sup>98</sup> This is in terms of Articles 1 and 2 of the CRPD

<sup>99</sup> United Nations Human Rights Office of the High Commissioner for Human Rights *Monitoring the UNCRPD: Guidance for the Human Rights Monitors* (2010) 13

<sup>100</sup> Article 7 of the CRPD

<sup>101</sup> See the Preamble of the CRPD

#### 2.4.1 INCLUSIVE EDUCATION FOR CHILDREN WITH VISUAL IMPAIRMENTS

The CRPD advocates for the right to education for PWDs, including children with visual impairments.<sup>102</sup> This right should be made available without any discrimination and on the basis of equal opportunity.<sup>103</sup> This is to ensure full development of PWDs including children with visual impairments.<sup>104</sup> In light of that, children with visual impairments have a right to inclusive education. States must ensure that children with visual impairments have non-discriminatory access to the general education system and that their needs are reasonably accommodated.<sup>105</sup> Inclusive education has been defined as a human right for every learner.<sup>106</sup> It is based on the principle that all children should learn in the same environment regardless of their differences.<sup>107</sup> States must provide the necessary support and accommodation through the establishment of an all-encompassing participatory environment.<sup>108</sup>

An inclusive education system aims at enabling PWDs, including children with visual impairments, to participate effectively in society and to cater for full development of human potential.<sup>109</sup> States must therefore ensure free primary education in communities where children with visual impairments live<sup>110</sup> to make it convenient for children with visual impairments to attend school. There is need to provide reasonable accommodation<sup>111</sup> and full support within the general system to CWDs including children with visual impairments.<sup>112</sup> State parties must provide reasonable accommodation to enable children with visual impairments to have access to education in regular schools.<sup>113</sup> Children with visual

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<sup>102</sup> Article 24 (1) of the CRPD

<sup>103</sup> Article 24 (1) of the CRPD

<sup>104</sup> Article 24 (1) (a) (b) of the CRPD

<sup>105</sup> Article 24 (2) (c) (n 15 above)

<sup>106</sup> General Comment 4 of the CRPD paragraph 10

<sup>107</sup> Article 24 (1) (a) (b) (c) of the CRPD

<sup>108</sup> UNESCO ‘School Violence and Bullying: Global Status Report (2016) <http://www.right-to-education.org> (accessed 7 May 2018)

<sup>109</sup> Article 24 (1) of the CRPD

<sup>110</sup> Article 24 (2) (b) of the CRPD

<sup>111</sup> In terms of Article 2 of the CRPD, reasonable accommodation means necessary and appropriate modification and adjustments to ensure that PWDs enjoy their human rights on an equal basis

<sup>112</sup> Article 24 (2) (d) of the CRPD

<sup>113</sup> Article 24 (2) (c) of the CRPD

impairments may be reasonably accommodated through the provision of Braille facilities and computerised voice commands in buildings or spaces that children with visual impairments access. There is need to avail the required support within the general education system to facilitate effective education of children with visual impairments.<sup>114</sup>

States must train teachers in Braille and further employ teachers with disabilities to ensure full realisation of inclusive education.<sup>115</sup> There is need for training of professionals on disability awareness issues and the use of appropriate augmentative and alternative modes of communication to support children with visual impairments.<sup>116</sup> The duty to provide reasonable accommodation is enforceable from the moment a request for such accommodation is made.<sup>117</sup> The Committee on the CRPD states that using excuses such as lack of financial resources to justify failure to progress towards inclusive education amounts to a grave violation of the CRPD.<sup>118</sup> Reasonable accommodation should not be subject to any terms and conditions and should not involve any extra costs to learners with visual impairments.<sup>119</sup> To fully implement Article 24 (2) (d),<sup>120</sup> States must ensure the provision of sufficiently trained and supported teaching staff and access to financial resources by visually impaired children.<sup>121</sup>

#### 2.4.2 ESSENTIAL ELEMENTS OF INCLUSIVE EDUCATION

In terms of General Comments<sup>122</sup> by the Committees on ICECSR and the CRPD respectively, inclusive education encompasses the notion of accessibility, adaptability, availability and acceptability commonly termed as the “4As”<sup>123</sup>.

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<sup>114</sup> Article 24 (2) (d) of the CRPD

<sup>115</sup> Article 24 (4) of the CRPD

<sup>116</sup> Article 24 (4) of the CRPD

<sup>117</sup> General Comment 4 of the CRPD paragraph 28

<sup>118</sup> General Comment 4 of the CRPD paragraph 28

<sup>119</sup> General Comment 4 of the CRPD paragraph 28

<sup>120</sup> This states that PWDs must receive the required support within the general education system to facilitate their effective education

<sup>121</sup> General comment number 4 by the Committee on the CRPD

<sup>122</sup> General Comments 4 of the CRPD and 13 of the ICESCR

#### 2.4.2.1 ACCESSIBILITY

Accessibility has three overlapping dimensions which are physical accessibility, economic accessibility and non-discrimination.<sup>124</sup> Non-discrimination entails that education must be accessible to all, especially the most vulnerable groups such as CWDs.<sup>125</sup> Economic accessibility suggests that education has to be affordable to all.<sup>126</sup> In addition, physical accessibility proposes that education has to be within safe physical reach of every child.<sup>127</sup> Safe physical reach may either be by attendance at some reasonably convenient geographic location or via modern technology.<sup>128</sup>

States must take appropriate measures to make schools accessible to children with visual impairments.<sup>129</sup> They must ensure that the education system including the teaching methods are accessible to all children<sup>130</sup> regardless of impairments.<sup>131</sup> Further, States must promulgate legislation which prohibits the building of future education facilities that are inaccessible to children with visual impairments.

States must also establish a monitoring mechanism and time frames for already existing education system to be made accessible by visually impaired children.<sup>132</sup> They should adopt “a universal design”<sup>133</sup> which requires States to ensure the designing of services and products that are useable by CWDs including children with visual impairments without the need for any adaptation.<sup>134</sup> States should further invest in developing textbooks and learning materials

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<sup>123</sup> The Committee on the CRPD draws on the recommendation of the Committee on ICECSR that, to fulfil that obligation, the education system must comprise four interrelated features: availability, accessibility, acceptability and adaptability.

<sup>124</sup> General comment 13 of the ICESCR paragraph 6

<sup>125</sup> General comment 13 of the ICESCR paragraph 6 (b)

<sup>126</sup> General comment 13 of the ICESCR paragraph 6 (b)

<sup>127</sup> General comment 13 of the ICESCR paragraph 6 (b)

<sup>128</sup> General comment 13 of the ICESCR paragraph 6 (b)

<sup>129</sup> Article 9 (1)(a) of the CRPD

<sup>130</sup> General Comment 2 of the CRPD paragraph 39

<sup>131</sup> Article 24 (2) (b) of the CRPD

<sup>132</sup> General Comment 2 of the CRPD paragraph 7

<sup>133</sup> General Comment 2 of the CRPD paragraphs 9,15 and 24

<sup>134</sup> Article 2 of the CRPD

in accessible formats such as Braille in order to efficiently provide access to inclusive primary education.<sup>135</sup> The learning environment for CWDs must be designed to foster inclusion and equality in education.<sup>136</sup> For example, school transportation, water and sanitation facilities should be inclusive, accessible and safe.<sup>137</sup>

#### 2.4.2.2 ACCEPTABILITY

Acceptability means that the form, content and substance of education must be acceptable to all students including those with visual impairments.<sup>138</sup> This means that the learning methods must be relevant and of good quality.<sup>139</sup> States must therefore ensure that all education related facilities are designed in such a way so as to accommodate the needs, views and culture of CWDs including children with visual impairments.<sup>140</sup> The form and substance of education must be culturally acceptable.<sup>141</sup> An inclusive approach to education makes a significant contribution to the quality of education.<sup>142</sup>

#### 2.4.2.3 AVAILABILITY

Availability refers to the obligation of States to ensure that there is enough functioning educational facilities which can accommodate CWDS including children with visual impairments in primary school.<sup>143</sup> Public and private educational institutions and programmes must be available in sufficient quantity and quality and States must ensure a comprehensive availability of educational institutions for learners with visual impairments at primary and all levels throughout the community.<sup>144</sup> States should therefore ensure the availability of individualised support measures to maximise the social and academic development of students with visual impairments.<sup>145</sup> There is also need to avail individualised education plans to cater for the identification of any reasonable accommodation and specific support needed

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<sup>135</sup> General Comment 2 of the CRPD paragraph 24

<sup>136</sup> General Comment 4 of the CRPD paragraph 22

<sup>137</sup> General Comment 4 of the CRPD paragraph 22

<sup>138</sup> General Comment 4 of the CRPD paragraph 25

<sup>139</sup> General Comment 13 of the ICESCR paragraph 6 (c)

<sup>140</sup> General Comment 4 of the CRPD paragraph 25

<sup>141</sup> General Comment 4 of the CRPD paragraph 25

<sup>142</sup> General Comment 4 of the CRPD paragraph 25

<sup>143</sup> Right to education initiative *Education as a right* <http://www.right-to-education.org> (accessed 7 May 2018)

<sup>144</sup> General Comment 4 of the CRPD paragraph 21

<sup>145</sup> Article 24 (2) (e) of the CRPD

by individual students.<sup>146</sup> States are also required to ensure children with visual impairments receive the needed support for their education within the general education system.<sup>147</sup> This can be done by availing trained teachers and braille and other facilities needed by children with visual impairments. States should invest towards meeting the obligations to provide Braille facilities and alternative modes of communication for the benefit of children with visual impairments.<sup>148</sup>

#### 2.4.2.4 ADAPTABILITY

Adaptability refers to the need for the education system all around to be flexible and open to changes in needs of societies and different needs of LWDs including children with visual impairments.<sup>149</sup> The education curricula must be designed to encompass the needs of every student and standardised tests must be replaced with more flexible forms of assessments taking into account different learning methods for every student.<sup>150</sup> Adapted teaching methods are of particular importance to students with visual impairments because they enable them to learn life and social development skills<sup>151</sup> though many States still find it difficult to provide conducive facilities to enable these students to gain such skills.<sup>152</sup> Children with visual impairments must be able to attend primary schools in the communities where they live<sup>153</sup> and local schools must not refuse to enrol them. The educational environment must be within safe physical reach for children with visual impairments and must include safe and secure means of transportation.<sup>154</sup> Further, the educational environment must be accessible through information and communications technologies.<sup>155</sup> State parties should avoid relying exclusively on technology as a substitute for the direct involvement of CWDs' interaction with teachers within the educational environment.<sup>156</sup>

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<sup>146</sup> General Comment 4 of the CRPD paragraph 21

<sup>147</sup> Article 24 (2)(d) of the CRPD

<sup>148</sup> General Comment 4 of the CRPD paragraph 21

<sup>149</sup> Right to education initiative: Education as a right (n 143 above)

<sup>150</sup> Right to education initiative: Education as a right (n 1143 above)

<sup>151</sup> Article 24 (3) of the CRPD

<sup>152</sup> General Comment 4 of the CRPD paragraph 26

<sup>153</sup> Article 24 (2) (b) of the CRPD

<sup>154</sup> General Comment 4 of the CRPD paragraph 27

<sup>155</sup> General Comment 4 of the CRPD paragraph 27

<sup>156</sup> General Comment 4 of the CRPD paragraph 27

## 2. 5 PROGRESSIVE REALISATION

Progressive realisation of the right to inclusive education means that States have a continuing obligation to move effectively towards the full realisation of Article 24 of the CRPD.<sup>157</sup> The State is therefore obligated to take the necessary measures to the maximum extent of the resources available,<sup>158</sup> to ensure full realisation of the right to education.<sup>159</sup> The State will have to do away with two systems of education namely mainstream education system and special or segregated education system.<sup>160</sup> States must therefore redefine their budget allocation for education including transferring part of their budgets to the development of inclusive education.<sup>161</sup>

States must ensure that there is non-discrimination within the education system.<sup>162</sup> All legal, administrative or other forms of discrimination that impede inclusive education must be done away with.<sup>163</sup> The State must eliminate structural disadvantages to achieve effective participation and quality education for all.<sup>164</sup> There is need to avail reasonable accommodation to ensure non-exclusion of PWDs including children with visual impairments.<sup>165</sup> Education must be free, compulsory and publicly funded.<sup>166</sup>

## 2.6 STATE DUTIES TOWARDS THE RIGHT TO INCLUSIVE EDUCATION

States have a duty to respect, protect and fulfil<sup>167</sup> each of the essential features of the right to inclusive education namely availability, accessibility, acceptability and adaptability.<sup>168</sup> This is to ensure full realisation of the right to inclusive education. The duty to respect requires

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<sup>157</sup> General Comment 3 of the ICESCR paragraph 9

<sup>158</sup> Article 4 (2) of the CRPD

<sup>159</sup> General Comment 4 of the CRPD paragraph 40

<sup>160</sup> General Comment 4 by the CRPD paragraph 40

<sup>161</sup> General Comment 4 by the CRPD paragraph 40

<sup>162</sup> General Comment 4 by the CRPD paragraph 41 (a)

<sup>163</sup> General Comment 4 by the CRPD paragraph 41 (a)

<sup>164</sup> General Comment 4 by the CRPD paragraph 41 (a)

<sup>165</sup> General Comment 4 by the CRPD paragraph 41 (b)

<sup>166</sup> General Comment 4 by the CRPD paragraph 41 (c)

<sup>167</sup> Article 1 of the CRPD

<sup>168</sup> General Comment 4 by the CRPD paragraph 39

eliminating measures that hinder the enjoyment of the right to education.<sup>169</sup> These measures include legislation excluding certain CWDs including children with visual impairments from education, or the denial of accessibility or reasonable accommodation.<sup>170</sup> The duty to respect entails that the State must prevent third parties from interfering with the enjoyment of the right.<sup>171</sup> These measures may include parents refusing to send children with visual impairments to school, or private institutions refusing to enrol children with visual impairments on the basis of their impairment. The duty to protect requires the State to stop third parties from interfering with the right to education by refusing to register children with visual impairments in primary schools and making institutions inaccessible due to their impairment or on account of cost.<sup>172</sup> The duty to fulfil requires that the State to enable and assist PWDs including children with visual impairments to enjoy the right to education. This may be done through ensuring that educational institutions are accessible and that education systems are adapted appropriately with resources and services. States should ensure full realisation of Article 24 of the CRPD<sup>173</sup> by abolishing mainstream and special education.<sup>174</sup>

## 2.7 REGIONAL NORMS PERTAINING TO CHILDREN WITH DISABILITIES: THE AFRICAN HUMAN RIGHTS SYSTEM

There has been a gradual development and acknowledgement of disability rights in the African human rights system.<sup>175</sup> This was necessitated by the growing international recognition of disability as a compelling human rights concern and also the shifting of the then Organisation of the African Unity (OAU) towards human rights orientation.<sup>176</sup> The African Charter on Human and Peoples' Rights (ACHPR) and the African Charter on the Rights and Welfare of the Child (ACRWC) address the rights of PWDs in general. However,

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<sup>169</sup> General Comment 13 by the ICESCR paragraph 47

<sup>170</sup> General Comment 13 by the ICESCR paragraph 47

<sup>171</sup> General Comment 13 by the ICESCR paragraph 47

<sup>172</sup> L Waddington & C Toepke *Moving towards inclusive education as a human right: An analysis of international obligations to implement inclusive education in law and policy* (2007) 44 <http://www.right-to-education.org> (accessed 7 May 2018)

<sup>173</sup> The Committee on the CRPD adopted this from General Comment Number 3 by the Committee on the ICESCR on the nature of State parties' obligations

<sup>174</sup> General Comment 4 of the CRPD paragraph 20

<sup>175</sup> H Combrinck 'Disability Rights In The African Regional Human Rights System During 2011 and 2012' (2013) Vol 1 *African Disability Rights Yearbook* 361

<sup>176</sup> H Combrinck (n 175 above) 361

the most distinctive instrument in Africa that addresses the right to education and other rights of CWDs is the ACRWC. The ACRWC was adopted by the then OAU now the African Union (AU) in November 2009<sup>177</sup> and it complements the Convention on the Rights of the Child (CRC) in its bid to address the rights of children in Africa.<sup>178</sup>

#### 2.7.1 THE AFRICAN CHARTER ON HUMAN AND PEOPLES' RIGHTS

The African Charter on Human and Peoples' Rights (ACHPR)<sup>179</sup> was adopted by the then OAU in 1981 and it entered into force in 1986. It protects and promotes human rights and basic fundamental freedoms in Africa.

##### 2.7.1.1 GUARANTEES FOR PROHIBITION OF DISCRIMINATION

Article 2 of the ACHPR advocates for prohibition of discrimination. However, this provision does not specifically provide for prohibition of discrimination on the basis of disability. The phrase 'other status' means that the list of grounds is not closed and thus disability may be one of the grounds upon which discrimination is prohibited. One may therefore opine that this provision protects children with visual impairments from discrimination within the education system.

##### 2.7.1.2 GUARANTEES FOR THE RIGHT TO EDUCATION

The ACHPR provides that every individual has the right to education.<sup>180</sup> This right ensures that every person including children with visual impairments attain an education. However, this provision does not encompass the right to inclusive education to accommodate CWDs including children with visual impairments in primary schools. As a result, children with visual impairments are unable to fully enjoy their right to inclusive education.

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<sup>177</sup> S T Tesemma *Children with Disabilities in Africa: Challenges and Opportunities* (2011) 24 <http://www.africanchildforum.org/en/index.php/en/> (accessed 11 May 2018)

<sup>178</sup> Unpublished: A Lloyd 'Regional Development on the Rights and Welfare of Children in Africa. A general Report on the ACRWC and the Africa Committee on experts' Unpublished thesis, University of West England (2003) 88 <http://www.uwe.ac.uk> (accessed 7 May 2018)

<sup>179</sup> Organisation of the African Unity (OAU), *African Charter on Human and Peoples' Rights*, 27 June 1981, <http://www.achpr.org> (accessed 15 August 2018)

<sup>180</sup> Article 17 of the African Charter of Human and Peoples' Rights

## 2.8 THE AFRICAN CHARTER ON THE RIGHTS AND WELFARE OF THE CHILD (ACRWC)

The ACRWC was adopted as a result of the notion by the African States that the CRC missed some important socio-cultural and economic realities of the African child's experience.<sup>181</sup> It imposes responsibilities on State parties to ensure full enjoyment of the rights therein.<sup>182</sup> The ACRWC makes elaborate provisions for the protection and promotion of the rights and welfare of children.<sup>183</sup> It further provides for the rights of CWDs,<sup>184</sup> the right to education<sup>185</sup> and the best interests of the child.<sup>186</sup>

### 2.8.1 GUARANTEES FOR PROHIBITION OF DISCRIMINATION

Article 3 of the ACRWC prohibits discrimination based on sex, religion, tribe, colour or other status. The phrase "other status" can be construed to refer to disability thus children with visual impairments are encompassed under this provision. This protects children with visual impairments from discrimination within the education system.

### 2.8.2 GUARANTEES FOR CHILDREN WITH DISABILITIES

Article 13 addresses the issue of disability and it provides for the obligation on State parties to ensure the construction of public buildings which are easily accessible by CWDs<sup>187</sup> to strengthen their mobility and access to public institutions and facilities. However, Article 13 only covers mental and physical disability and does not cover children with visual impairments and all the other CWDs.

### 2.8.3 GUARANTEES FOR THE RIGHT TO EDUCATION

Article 11 of ACRWC provides for the right to free and compulsory education<sup>188</sup> to ensure the development of the child's physical and mental abilities.<sup>189</sup> Although this is a progressive provision, it does not encompass the crucial issue of inclusivity within the primary education system which of great importance to children with visual impairments because educational

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<sup>181</sup> D Olowu 'Protecting Children's Rights in Africa: A Critique of the African Charter on the Rights and Welfare of the Child' (2002) Vol 10 *The International Journal of Children's Rights* 127

<sup>182</sup> Article 1 of the African Charter on the Rights and Welfare of the Child

<sup>183</sup> D Olowu (n 231 above) 128

<sup>184</sup> Article 13 of the ACRWC

<sup>185</sup> Article 11 of the ACRWC

<sup>186</sup> Article 4 of the ACRWC

<sup>187</sup> Article 13 (3) of the ACRWC

<sup>188</sup> Article 11 (1) and (3) (a) of the ACRWC

<sup>189</sup> Article 11(1) of the ACRWC

needs for children with visual impairments are different from those of visually acute children.<sup>190</sup>

## 2.9 CONCLUSION

This chapter explored international and regional standards on the right to inclusive primary education for children with visual impairments. The study discussed the international and regional instruments as well as the soft law that preceded the CRPD. These instruments include the United Declaration on Human Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention on the Rights of the Child and the African Charter on the Rights and Welfare of the Child. Soft law includes the Declaration on the Rights of Mentally Retarded Persons, the Declaration on the Rights of Disabled Persons and the Declaration on Social Progress and Development. Although these instruments provide for the right to education and non-discrimination towards PWDs including children with visual impairments, they do not make specific provision for inclusive education in primary schools. Hence, the adoption of the CRPD was a milestone in the history of disability rights because it is a comprehensive instrument. It addresses disability in a social and human rights model as opposed to a medical model enunciated in the instruments preceding it. The CRPD urges all member States to ensure that PWDs including children with visual impairments are educated in an inclusive environment. It further calls upon all member States to provide reasonable accommodation for all learners with disabilities including children with visual impairments.

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<sup>190</sup> H Combrinck (n 175 above) 361

## CHAPTER 3: ZIMBABWE NATIONAL FRAMEWORK

### 3.1 INTRODUCTION

The previous chapter explored regional and international instruments on the right to education of PWDs including children with visual impairments. This chapter examines the constitutional, legislative and policy frameworks which promote the right to inclusive education for children with visual impairments in Zimbabwe. This is done to establish the extent and scope of the right to inclusive education in Zimbabwe and to test whether the current frameworks comply with the international standards in as far as the right to inclusive education is concerned. In this chapter, the Lancaster House Constitution, the 2013 Constitution, the Disabled Persons Act, the Education Act and the Children's Act are examined. In addition, the National Disability Policy has been examined under the Policy framework.

### 3.2 THE CONSTITUTIONAL FRAMEWORK

#### 3.2.1 THE LANCASTER HOUSE CONSTITUTION<sup>191</sup>

The Lancaster House Constitution came into effect after the signing of the Lancaster House Agreement on 21 December 1979.<sup>192</sup> It was adopted as a result of a ceasefire in the then

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<sup>191</sup> Lancaster House Constitution, 1979

<sup>192</sup> A E Sibanda 'The Lancaster House Agreement and the post-independence state in Zimbabwe' Institute of Development Studies (1991) <http://www.opendocs.ids.ac.uk> (accessed 5 September 2018)

Rhodesia.<sup>193</sup> The Lancaster House Constitution<sup>194</sup> did not contain provisions that addressed the rights of persons with disabilities (PWDs) in general, neither did it address the right to education. After widespread campaigns by organisations that advocated for the rights of PWDs,<sup>195</sup> it was amended to include physical disability as a ground upon which discrimination was prohibited.<sup>196</sup> Whilst the amendment was a plausible move, the provision did not prohibit discrimination based on the other forms of disability such as long-term mental and intellectual or sensory impairments recognised under the CRPD.<sup>197</sup> The Lancaster House Constitution was never amended to encompass the right to education.

### 3.2.2 THE 2013 CONSTITUTION

The 2008 Government of National Unity (GNU) negotiated a new proposed Constitution to overhaul the Lancaster House Constitution.<sup>198</sup> The 2013 Constitution established a State-based respect of fundamental socio-economic rights. The advent of the 2013 Constitution<sup>199</sup> brought about a paradigm shift in the history of disability rights *vis-à-vis* the right to education for PWDs in general including children with visual impairments. The right to education is one of the most crucial socio- economic right which should be made available to

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<sup>193</sup> A E Sibanda (n 192 above)

<sup>194</sup> The Lancaster House Constitution, 1979

<sup>195</sup> The National Association of Societies for the Care of the Handicapped (NASCOH) and the Southern Africa Federation of the Disabled (SAFOD) were some of the NGOs that campaigned for the inclusion of disability as a ground upon which discrimination is prohibited

<sup>196</sup> Section 23 of the Lancaster House Constitution. The initial provision prohibited discrimination solely based on gender, tribe, race, place of origin, political opinions, colour, creed, sex and marital status.

<sup>197</sup> Article 1 of the CRPD. See also E Mandipa 'A critical analysis of the legal and institutional frameworks for the realisation of the rights of Persons with Disabilities in Zimbabwe' (2013) Vol 1 *African Disability Rights Yearbook* 76 <http://www.up.ac.za/disability-unit> (accessed 11 May 2018)

<sup>198</sup> K Magaya 'Constitution by the People or to the People: A Critical Analysis of Zimbabwe's Constitutional Development in View of the Constitution Select Committee (Copac) Led' (2015) Vol 3 *Process Journal of Political Sciences and Public Affairs* 7 <http://www.omiconline.org> (accessed 1 September 2018)

<sup>199</sup> Constitution of Zimbabwe Amendment (No 20) Act, 2013

every child without discrimination.<sup>200</sup> To ensure full and equal realisation of the right to education in Zimbabwe, the Constitution enunciates the principle of equality and non-discrimination and further prohibits discrimination on the basis of disability.<sup>201</sup> This is in line with Article 5 and Article 12 of the CRPD which advocate for equality, non-discrimination and equal recognition before the law respectively.<sup>202</sup>

The Constitution further provides for the principle of recognition of the equality of all human beings and the recognition of the rights of visually impaired children in its founding values.<sup>203</sup> This is in line with Article 17 of the CRPD which provides for the protection of the integrity of person with disabilities by ensuring that their mental and physical integrity is respected on an equal basis.<sup>204</sup> In addition, the Constitution recognises the right to education for children with visual impairments in its national objectives where it clearly provides that the State must take measures to promote free and compulsory basic education for children<sup>205</sup> in line with Article 24 (2) (a) of the CRPD. Section 83 of the Constitution further buttresses this right by providing that the State has a duty to provide State-funded education to PWDs including children with visual impairments<sup>206</sup> and to provide special facilities for their education.<sup>207</sup> Further, the Constitution enshrines the right to education in the Bill of Rights where it provides that every citizen of Zimbabwe has a right to a basic State-funded education.<sup>208</sup> This provision as read with the other supporting provisions in the national objectives and founding provisions is progressive as it ensures enhanced access to education by children with visual impairments.

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<sup>200</sup> This right is addressed in the ICESCR Article 13, the Constitution of Zimbabwe Section 75 and the Education Act Section 4

<sup>201</sup> Section 56 (1) and (3) of the Constitution

<sup>202</sup> Articles 5 and 12 of the CRPD

<sup>203</sup> Section 3 (1) (f) and 3 (2) (i) (ii) of the Constitution

<sup>204</sup> Article 17 of the CRPD

<sup>205</sup> Section 27 (1) (a) of the Constitution

<sup>206</sup> Section 83 (f) states that the right to state funded education is available to PWDs and this encompasses children with visual impairments

<sup>207</sup> Section 83 (e) of the Constitution

<sup>208</sup> Section 75 (1) (a) of the Constitution

The Constitution<sup>209</sup> establishes education as a human right that should be availed to everyone without discrimination on the basis of disability. The right to education places a duty on the State to establish an inclusive education system<sup>210</sup> for CWDs including children with visual impairments. It further obligates the State to take measures to employ teachers including teachers with disabilities who are qualified in Braille.<sup>211</sup> The right to education also entails that the State must train professionals and staff<sup>212</sup> who work in primary schools on disability awareness and on the use of appropriate and alternative modes and means of communication to support children with visual impairments.<sup>213</sup> In light of the provisions on the right to education, children with visual impairments must have access to mainstream primary education on an equal and inclusive basis.<sup>214</sup> The State is therefore obligated to avail and safeguard education and training to children with visual impairments when they need it.<sup>215</sup>

It should however be noted that although the Constitution provides for the right to basic state-funded education<sup>216</sup> and training<sup>217</sup>, it does not provide for inclusive primary education to ensure that children with visual impairments receive education in the mainstream primary schools. In addition, although the Constitution provides that PWDs should be provided with special facilities for their education, it does not move away from the ‘special schools’<sup>218</sup> approach so as to embrace inclusive education. As a result, children with visual impairments continue to receive education in a segregated environment. This is against the provisions of Article 24 (1) (2) (a) (b) of the CRPD which urge States to ensure an inclusive education system at all levels.<sup>219</sup> One must also note that the Constitution does not incorporate the issue

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<sup>209</sup> Section 75 (1) (a) as read with Section 56 (3) of the Constitution

<sup>210</sup> This is in line with Article 24 (2) of the CRPD

<sup>211</sup> Article 24 (4) of the CRPD

<sup>212</sup> This is in line with Article 24 (4) of the CRPD

<sup>213</sup> Centre for Applied Legal Research ‘*Review of Laws affecting Persons with Disabilities in Zimbabwe: Alignment of legislation to the Convention on the Rights of Persons with Disabilities and the Constitution of Zimbabwe*’ 2013 <http://www.ca-lr.org> (accessed 11 June 2018) 12

<sup>214</sup> Article 24 (2) (a) (b) of the CRPD

<sup>215</sup> The State has this obligation in terms of Article 24 (2) (d) of the CRPD

<sup>216</sup> Section 75 (1) (a) of the Constitution

<sup>217</sup> Section 83 (f) of the Constitution

<sup>218</sup> Section 83 (e) of the Constitution

<sup>219</sup> Article 24 (1) and (2) (a) (b) of the CRPD

of learning Braille and alternative means or modes of communication and mobility skills in primary schools.<sup>220</sup> Further, the Constitution does not provide for the training on the use of Braille and employment of teachers with visual impairments to enable children with visual impairments to enjoy their right to inclusive primary education.<sup>221</sup>

### 3.3 THE LEGISLATIVE FRAMEWORK

#### 3.3.1 THE EDUCATION ACT

The Education Act<sup>222</sup> is the major law that addresses the right to education for all children in Zimbabwe.<sup>223</sup> It regulates the establishment and operations of all primary and secondary schools, governmental and non-governmental institutions, correspondence and independent colleges, institutions focusing on adult education and nursery schools.<sup>224</sup> The Act establishes education as a human right.<sup>225</sup> It prohibits refusal of admission for any child at any school in Zimbabwe and discrimination on the basis of race, tribe, place of origin, national or ethnic origin, political opinions, colour, creed or gender.<sup>226</sup> The Education Act further provides that primary education for every child of school going age shall be compulsory and the parents of such children have a duty to ensure that children attend primary education.<sup>227</sup> This is a progressive provision because children with visual impairments are entitled to primary education as a right and parents are obliged to send them to school.<sup>228</sup> This is also in line with Article 24 (2) (a) of the CRPD.

The Education Act outlines the functions and duties of the Minister responsible for education.<sup>229</sup> It requires the Minister to promote and enhance education of the people of Zimbabwe and to ensure progressive development of educational services.<sup>230</sup> The Education Act places a duty on local authorities to establish and maintain primary and secondary

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<sup>220</sup> Facilitating the learning of Braille is in accordance with Article 24 (3) (a) of the CRPD

<sup>221</sup> Article 24 (4) of the CRPD

<sup>222</sup> [Chapter 25:04]

<sup>223</sup> The Education Act came into force in 1987

<sup>224</sup> Section 3 (1) as read with Sections 24, 25 and 27 of the Education Act

<sup>225</sup> Section 4 (1) of the Education Act

<sup>226</sup> Section 4 (2) (a) (b) of the Education Act

<sup>227</sup> Section 5 of the Education Act

<sup>228</sup> Section 5 of the Education Act is peremptory

<sup>229</sup> Section 7 of the Education Act

<sup>230</sup> Section 7 of the Education Act

schools for all children in the area under its jurisdiction to ensure a fair and equitable primary education.<sup>231</sup> It further provides for every child's entitlement to enrol at their nearest schools.<sup>232</sup> This is a progressive move as it eases the burden of travelling long distances on the part of children with visual impairments many of whom cannot afford to have escorts to accompany them to and from distant schools.

Although the Act provides for a right to education for all,<sup>233</sup> it does provide for the right to inclusive education in order to accommodate children with visual impairments in mainstream primary schools in line with Article 24 (2) (a) (b) of the CRPD.<sup>234</sup> In addition, the Act does not prohibit discrimination on the basis of disability<sup>235</sup> thus regular primary school authorities may refuse to enrol children with visual impairments on the basis of their disability.<sup>236</sup> This is against the spirit of Article 24 (2) (a) which urges State parties to ensure that CWDs including children with visual impairments are not excluded from free and compulsory primary education on the basis of their disability.<sup>237</sup> This is also against Articles 5 and 12 of the CRPD which advocate for equality and non-discrimination and equal recognition before the law respectively.<sup>238</sup>

In as much as the provision that promotes compulsory education is progressive<sup>239</sup>, there is no acknowledgement that the current educational setup in primary schools is not conducive<sup>240</sup> for children with visual impairments. This acts as a hindrance to their attainment of compulsory education.<sup>241</sup> In addition, the Education Act does not provide for the availing of

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<sup>231</sup> Section 8 of the Education Act

<sup>232</sup> Section 10 of the Education Act

<sup>233</sup> Section 4 (1) of the Education Act

<sup>234</sup> Centre for Applied Legal Research (n 213 above) 14-15

<sup>235</sup> Centre for Applied Legal Research (n 213 above) 14

<sup>236</sup> Section 4 of the Education Act prohibits discrimination on the basis of race, tribe, place of origin, nationality, ethnic origin, political opinions, colour, creed or gender but does not mention disability

<sup>237</sup> Article 24 (2) (a) of the CRPD

<sup>238</sup> Articles 5 and 12 of the CRPD

<sup>239</sup> Compulsory education is provided for under Section 5 of the Education Act

<sup>240</sup> Centre for Applied Legal Research (n 213 above) 14

<sup>241</sup> Centre for Applied Legal Research (n 213 above) 14

Braille facilities and trained teachers<sup>242</sup> in line with the CRPD.<sup>243</sup> Further, the Education Act as a whole does not provide for the need to avail resources such as the use of appropriate augmentative, alternative modes, means and formats of communication.<sup>244</sup> In addition, the Education Act fails to take into account the need to provide educational techniques and materials<sup>245</sup> to support children with visual impairments in primary schools.<sup>246</sup> It has been noted that the lack of Braille facilities, trained teachers and a conducive environment impacts heavily in a negative way on the attainment of compulsory education by children with visual impairments.<sup>247</sup> It should be emphasised that although the Education Act obligates the Minister to enhance and promote education and to ensure progressive development of educational services<sup>248</sup>, it falls short of meeting international standards because it does not obligate him or her to ensure the establishment of an inclusive primary education system.<sup>249</sup> The establishment of an inclusive education system would cater for CWDs including children with visual impairments in accordance with Article 24 (2) (a) of the CRPD. In addition, in as much the Education Act ensures that there are adequate schools in every child's jurisdiction,<sup>250</sup> there is no obligation on the local authorities to establish and provide an inclusive education system<sup>251</sup> in line with Article 24 (2) (a) (b) of the CRPD which places a duty on the State to ensure that visually impaired children access mainstream primary education on an equal basis.

It can be further noted that although the Education Act entitles a CWD including a child with visual impairments to enrol at his or her nearest school where he or she is ordinarily resident<sup>252</sup>, it does not consider the lack of Braille facilities and trained teachers in these local

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<sup>242</sup> Centre for Applied Legal Research (n 213 above) 14

<sup>243</sup> This is in terms of Article 24 (1), (2) (b), (3) (a) and (4) of the CRPD

<sup>244</sup> Article 24 (3) (a) of the CRPD

<sup>245</sup> This is in terms of Article 24 (3) (a) of the CRPD

<sup>246</sup> Centre for Applied Legal Research (n 213 above) 14

<sup>247</sup> Centre for Applied Legal Research (n 213 above) 14

<sup>248</sup> Section 7 of the Education Act

<sup>249</sup> Centre for Applied Legal Research (n 213 above) 15

<sup>250</sup> Section 8 of the Education Act obligates every local authority to establish and maintain primary schools for all children under its jurisdiction

<sup>251</sup> Centre for Applied Legal Research (n 213 above) 15

<sup>252</sup> Section 10 of the Education Act

schools. As a result of non-availability of Braille facilities and trained teachers, local schools usually refuse to enrol visually impaired children because they are unable to accommodate them and their special needs. This is against Article 24 (2) (b) of the CRPD which calls upon all State parties to establish an inclusive primary education system in the communities where visually impaired children live.<sup>253</sup> The Education Act thus fails to consider the need for an inclusive primary education system.<sup>254</sup> It has been noted the State has not been forthcoming in implementing an inclusive education system although the issue has been considered since 1994.<sup>255</sup>

### 3.3.2 THE DISABLED PERSONS ACT

The Disabled Persons Act (DPA)<sup>256</sup> is the main piece of legislation that provides for the welfare and rehabilitation of PWDs in Zimbabwe.<sup>257</sup> It establishes the office of the Director of Disabled Persons' Affairs<sup>258</sup> which is tasked with the formulation of proposals for submission to the National Disability Board (NDB)<sup>259</sup> and to further secure the implementation thereof.<sup>260</sup> The DPA further establishes the NDB<sup>261</sup> whose functions include to devise policies and measures for PWDS to enable them to live independently<sup>262</sup>, to give effect to international treaties relating to the well-being of PWDs to which Zimbabwe is a party<sup>263</sup> and to prevent discrimination of PWDs.<sup>264</sup> The NDB is tasked with, *inter alia*, the

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<sup>253</sup> Article 24 (2) (b) of the CRPD

<sup>254</sup> The Education Act as a whole does not encompass the issue of inclusive education and does not obligate the State to establish one

<sup>255</sup> Centre for Applied Legal Research (n 213 above) 15

<sup>256</sup> [Chapter 17:01]

<sup>257</sup> In terms of the Preamble to the Disabled Persons Act, the Act was established to make provision for the welfare and rehabilitation of disabled persons and this encompasses visually impaired children

<sup>258</sup> Section 3 (1) of the Disabled Persons Act

<sup>259</sup> Section 3 (2) (a) of the Disabled Persons Act

<sup>260</sup> Section 3 (2) (a) (b) of the Disabled Persons Act

<sup>261</sup> Section 4 of the Disabled Persons Act establishes the National Disability Board

<sup>262</sup> Section 5 (1) (b) (ii) of the Disabled Persons Act

<sup>263</sup> Section 5 (1) (b) (iii) of the Disabled Persons Act

<sup>264</sup> Section 5 (1) (b) (iv) of the Disabled Persons Act

examination of matters relating to the promotion of the welfare of PWDs.<sup>265</sup> It is also tasked with the issuing of adjustment orders<sup>266</sup> for enabling access to public buildings which is in line with Article 9 of the CRPD. To ensure the effective implementation of adjustment orders, the DPA criminalises failure to follow adjustment orders<sup>267</sup> and this is compatible with Article 9 which mandates the States to take appropriate measures to develop and monitor the implementation of guidelines for the accessibility of facilities and services for PWDs.<sup>268</sup> The DPA further prohibits denial of disabled persons access to public premises, services and amenities<sup>269</sup> and this ensures access to public transport, information and communication and other amenities by PWDs. The DPA contains progressive provisions which ensure that children with visual impairments have access to public schools and will therefore attain their education in an inclusive environment as public schools will be forced to provide facilities to enable them to attain primary education in mainstream schools.<sup>270</sup>

It may be emphasised that the DPA provides for the promotion and implementation of policies and measures to achieve equal opportunities for disabled persons by ensuring that they obtain education and employment.<sup>271</sup> However, although the NDB is tasked with ensuring that treaties that relate to the welfare of PWDs are put into effect<sup>272</sup>, nothing has been done to ensure the establishment of an inclusive education system in line with the CRPD.<sup>273</sup> The DPA also fails to take into account the provisions of Article 24 (3) (a) (c) which obligate State parties to facilitate the learning of braille and to ensure that the education of children with visual impairments is delivered in the most appropriate language.<sup>274</sup> In addition, the DPA has also failed to eradicate the discrimination of children

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<sup>265</sup> Section 5 (1) (b) of the Disabled Persons Act

<sup>266</sup> Section 5 (1) (a) as read with Section 7 of the Disabled Persons Act

<sup>267</sup> Section 7 (8) of the Disabled Persons Act

<sup>268</sup> Article 9 (2) (a) of the CRPD

<sup>269</sup> Section 8 of the Disabled Persons Act

<sup>270</sup> These rights are guaranteed under Section 7 and 8 of the Disabled Persons Act

<sup>271</sup> Section 5 (1) (i) of the Disabled Persons Act

<sup>272</sup> Section 5 (1) (b) (iii) of the Disabled Persons Act

<sup>273</sup> Article 24 of the CRPD advocates for inclusive education

<sup>274</sup> Article 24 (3) (a) and (c) of the CRPD

with visual impairments<sup>275</sup> in primary schools as school authorities still refuse to enrol these children because of lack of Braille facilities and trained teachers.

It is notable that although the DPA empowers the NDB to issue adjustment orders, it cannot issue adjustment orders in respect of State owned schools and educational institutions without the consent of the Minister.<sup>276</sup> In light of this, the NDB is crippled in issuing an adjustment order to a primary school which does not accommodate children with visual impairments because it has to acquire consent from the Minister who at times, maybe unwilling to do so because of political or any other reasons.<sup>277</sup> It should also be emphasised that although the NDB can issue adjustment orders<sup>278</sup>, it can only do so in relation to public buildings and premises only.<sup>279</sup> This is not enough as children with visual impairments should also have access to private buildings and schools and as such the owner thereof has a duty to make it accessible. In addition, the NDB which is empowered to devise policies and measures for PWDS is ineffective due to lack of resources.<sup>280</sup> This is because the NDB does not enjoy any form of independence as it survives from financial proceeds from the Department of Social Welfare.<sup>281</sup> It should therefore be noted that, even if the NDB might have wanted to take measures on the establishment of an inclusive education system, it is unable to implement the policies and proposals due to lack of resources. One must also note that in as much as the NDB advocated for the inclusion of the rights of PWDs in the 2013 Constitution, nothing concrete materialised as evidenced by the lack of an inclusive education system in Zimbabwe.

The NDB is ineffective because it is not independent. This is because it operates under the strict instructions of the responsible Minister who has immense powers over it. The Minister appoints members of the NDB and can further assign personnel from his Ministry to perform

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<sup>275</sup> Section 5 (1) (b) (iv) of the Disabled Persons Act states that the National Disability Board is tasked with the preventing discrimination against PWDs resulting from their disability

<sup>276</sup> Section 7 (7) of the Disabled Persons Act

<sup>277</sup> E Mandipa (n 197 above) 92

<sup>278</sup> Section 7 as read with section 5 of the Disabled Persons Act

<sup>279</sup> Section 7 (1) (a) (b) of the Disabled Persons Act

<sup>280</sup> E Mandipa (n 197 above) 91

<sup>281</sup> E Mandipa (n 197 above) 91

secretarial and administrative functions of the Board.<sup>282</sup> All the records of the NDB are kept by the Minister<sup>283</sup> and he also approves every cost to be incurred by the Board.<sup>284</sup> The NDB relies on the Minister's instructions because he is administratively responsible for the NDB.<sup>285</sup> For example, the NDB cannot issue adjustment orders to educational institutions without seeking the consent of the Minister first.<sup>286</sup> It is therefore impossible for the NDB to independently issue adjustment orders to public schools that cannot accommodate children with visual impairments. This means that children with visual impairments will continue to attain education in special schools where their needs are accommodated. Further, it is difficult for the NDB to ensure the establishment of an inclusive education if the Minister does not appreciate its relevance and benefits to children with visual impairments. This is usually the case especially if the Minister might not be well versed in disability rights and this might impact negatively on the realisation of the rights of children with visual impairments.<sup>287</sup>

### 3.3.3 THE CHILDREN'S ACT<sup>288</sup>

This Act provides for the welfare, protection and supervision of children.<sup>289</sup> It establishes, among other things, the Child Welfare Council<sup>290</sup> and the Children's Courts.<sup>291</sup> In addition, the Children's Act provides for the prevention of ill-treatment of children.<sup>292</sup> The Child Welfare Council is composed of personnel drawn from various Ministries of the government,<sup>293</sup> the Police Force,<sup>294</sup> private voluntary organisations or organisations that deal

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<sup>282</sup> Section 4 (3) of the Disabled Persons Act

<sup>283</sup> Section 4 (5) (b) of the Disabled Persons Act

<sup>284</sup> Section 4 (5) (c) of the Disabled Persons Act

<sup>285</sup> E Mandipa (n 197 above) 91

<sup>286</sup> Section 7 (7) (b) of the Disabled Persons Act

<sup>287</sup> E Mandipa (n 197 above) 92

<sup>288</sup> [Chapter 5:06]

<sup>289</sup> The Preamble to the Children's Act

<sup>290</sup> Section 2A of the Children's Act

<sup>291</sup> Part II of the Children's Act

<sup>292</sup> Part III of the Children's Act

<sup>293</sup> Members of the Child Welfare Council are appointed from, *inter alia*, the Ministries of education, justice, local government and health in accordance with Section 2A (1) (a) of the Children's Act

<sup>294</sup> Section 2A (1) (b) of the Children's Act

with issues concerning the welfare of children<sup>295</sup> and the Council of Chiefs.<sup>296</sup> The Child Welfare Council is tasked with the monitoring of the state of affairs of children in need of care in trying to ensure that their welfare and rights are advanced.<sup>297</sup> The Child Welfare Council is also tasked with the co-ordination of the activities of organisations that advocate for the protection of the rights of children<sup>298</sup> and it further administers the Child Welfare Fund.<sup>299</sup> It has been noted that although the Act outlines that it protects the rights of children, it does not expressly mention the rights of CWDs as CWDs are often marginalised as compared to their able bodied counterparts. The Preamble to the Act simply outlines that the Act governs the welfare of children in general even though it is clear that the CWDs have different special needs from any other ordinary children. It should also be noted that there is no member drawn from organisations that advocate for the rights of CWDs within the Child Welfare Council. It has been emphasised that although some members of the Child Welfare Council are drawn from organisations that advocate for children's rights,<sup>300</sup> some of these organisations do not necessarily advocate for the rights of CWDs.<sup>301</sup> The non-incorporation of organisations that advocate for the rights of CWDs in the Child Welfare Council means that their best interest are not taken into account. This is against Article 7 (2) of the CRPD which states that in all matters concerning CWDs, the best interests of the child must be of primary consideration.<sup>302</sup> One can therefore note that the Child Welfare Council does not consider the specific and special needs of children with visual impairments and all the other CWDs. One may also note that the Children's Act does not encompass children with visual impairments as children in need of care.<sup>303</sup> This means that the rights of children with visual impairments are not protected under this provision.

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<sup>295</sup> Section 2A (1) (c) of the Children's Act

<sup>296</sup> Section 2A (1) (d) of the Children's Act

<sup>297</sup> Section 2B (b) of the Children's Act

<sup>298</sup> Section 2B (c) of the Children's Act

<sup>299</sup> Section 2B (e) of the Children's Act

<sup>300</sup> Section 2A (1) (c) of the Children's Act

<sup>301</sup> E Mandipa (n 197 above) 93

<sup>302</sup> Article 7 (2) of the CRPD

<sup>303</sup> A child in need of care is defined as, among other things, a child who suffers from a mental or physical disability and requires treatment, training or facilities which his parents or guardian are unable to provide

It should also be emphasised that there is no obligation placed upon the Child Welfare Council to deal with peculiar issues that children with visual impairments face. Additionally, although the membership of the Child Welfare Council consists of someone from the Ministry of education nothing on inclusive education has been suggested or formulated since the inception of the Children's Act. One may also conclude that the Children's Act generalises the functions of the Child Welfare Council<sup>304</sup> and there is therefore no mention of CWDs. This is against the CRPD which states that States must take necessary measures to ensure full enjoyment of all human rights by CWDs on an equal basis.<sup>305</sup> In conclusion, the Children's Act does not cater for inclusive primary education for children with visual impairments.

### 3.4 THE POLICY FRAMEWORK

#### 3.4.1 THE NATIONAL DISABILITY POLICY

The National Disability Policy (the Policy) was drafted by the Ministry of Public Service, Labour and Social Welfare and it should be read together with the other relevant statutes and policies of the Department of Social Welfare and other Ministries that provide rights based services for children with visual impairments.<sup>306</sup> The key principles that underpin the Policy are accessibility, access to appropriate services, social integration and inclusion.<sup>307</sup> The Policy defines what disability is and it encompasses the definition in the CRPD.<sup>308</sup> In discussing the principle of accessibility, the Policy addresses the principle of full inclusion, equality and participation in the mainstream society by children with visual impairments and all the other PWDs.<sup>309</sup> Under this, the Policy outlines that buildings should be adaptive to the needs of the visually impaired children. As such, buildings should have Braille print and voice commands in lifts to facilitate the use by children with visual impairments.<sup>310</sup> The policy also advocates for the adoption of the principle of universal design. This principle promotes access to appropriate services such as Braille for children with visual impairments.

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<sup>304</sup> Section 2B of the Children's Act

<sup>305</sup> Article 7 (1) of the CRPD

<sup>306</sup> Government of Zimbabwe National Disability Policy Final Draft Ministry of Public Service, Labour and Social Welfare 19

<sup>307</sup> Government of Zimbabwe National Disability Policy Final Draft (n 306 above) 19-25

<sup>308</sup> Article 1 of the CRPD

<sup>309</sup> Government of Zimbabwe National Disability Policy Final Draft (n 306 above) 20

<sup>310</sup> Government of Zimbabwe National Disability Policy Final Draft (n 306 above) 26

Of notable significance is the principle of inclusion which entails the right of children with visual impairments to participate in their local schools and to be provided with all the support they need to thrive in that mainstream setting. It should also be noted that the Policy emphasises the need for an inclusive education system to accommodate visually impaired children and all the other CWDs. It emphasises that almost all school facilities are inaccessible to visually impaired children and other CWDs and that teacher education and curriculum does not incorporate the needs of visually impaired children.<sup>311</sup> The Policy therefore calls the realignment of the Education Act<sup>312</sup> with Article 24 of the CRPD to address the issue of inclusive education.<sup>313</sup> It should however be noted that although the Policy is a milestone in the realisation of the right to inclusive primary education, it is only persuasive and not binding. In other words, the Policy only provides guidelines in the promotion and advancement of the right to education for visually impaired children. One can only but hope that the Legislature takes into consideration the provisions of the Policy if it decides to amend the laws. In addition, the Policy does not state how the issue of inclusive primary education is to be implemented and when. The measures the State is supposed to take in relation to the establishment of an inclusive primary education system and the budget thereof are unknown issues. In consideration of the above-stated loopholes, the Policy becomes an effective piece of legislation.

### 3.5 CONCLUSION

This chapter outlined the constitutional, legal, institutional and policy frameworks in Zimbabwe on the right to an inclusive primary education system for children with visual impairments. Under the constitutional framework, it explored the Lancaster House Constitution and the 2013 Constitution. Furthermore, it examined the Education Act, the Children's Act and the Disabled Persons Act under the legal framework. Under the Policy framework, the study explored the National Disability Policy and its provisions. It further ventured into the institutional framework and explored the Ministry of Public Service, Labour and Social Welfare, the Ministry of Primary and Secondary Education, the Office of the Special Advisor on Disability to the President and the Cabinet and the National Disability Board.

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<sup>311</sup>Government of Zimbabwe National Disability Policy Final Draft (n 306 above) 33

<sup>312</sup>Section 4 of the Education Act

<sup>313</sup>Government of Zimbabwe National Disability Policy Final Draft (n 306 above) 34

## CHAPTER 4: A SITUATIONAL ANALYSIS OF ZIMBABWE AND SOUTH AFRICA

### 4.1 INTRODUCTION

The previous chapter examined various constitutional, legislative and policy frameworks on the right to inclusive primary education in Zimbabwe. This was done so as to lay down the law on inclusive education and to explore various institutions that deal with the rights of persons with disabilities (PWDs) including children with visual impairments and the right to inclusive education. This chapter provides a situational analysis on the right to inclusive education for children with visual impairments in primary schools in Zimbabwe. In doing this, the study explores the challenges or barriers to inclusive primary education faced by children with visual impairments in Zimbabwe. Furthermore, the study explores the right to inclusive primary education for children with visual impairments in South Africa in a bid to show that South Africa has a better inclusive education framework thus children with visual impairments enjoy the right to inclusive education.

## 4.2 THE REALISATION OF THE RIGHT TO INCLUSIVE PRIMARY SCHOOL EDUCATION IN ZIMBABWE

Education is a basic human right for CWDs including children with visual impairments.<sup>314</sup> The CRPD further elaborates the right to education by providing that PWDs must receive this right in an inclusive setting. According to a 2012 Zimbabwe Census Report, about 1% to 10% of CWDs have access to education.<sup>315</sup> Although children with visual impairments in Zimbabwe have a right to inclusive primary education, they face quite a number of challenges in a bid to realise this right. These challenges are discussed below.

### 4.2.1 CHALLENGES FACED BY CHILDREN WITH VISUAL IMPAIRMENTS IN ATTAINING PRIMARY EDUCATION

#### 4.2.1.1 LACK OF ACCESS TO EDUCATION

Most of the children with visual impairments have no access to education because of outright poverty. A few who attend school do so in separate special schools which cater for their disability.<sup>316</sup> Special schools are expensive. In addition, they instil a sense of stigmatisation and discrimination in children with visual impairments. Separate special schools use a different curriculum from that of ordinary schools but all students are later examined using already defined standards. As a result of lack of education, children with visual impairments remain objects of charity even when grow up because they are unable to secure lucrative employment.<sup>317</sup> School authorities lack awareness on the right to education for children with visual impairments because they still believe that it is difficult to educate them within the mainstream primary school.<sup>318</sup> Due to this misconception, school authorities sometimes refuse to enrol children with visual impairments.<sup>319</sup>

#### 4.2.1.2 LACK OF BRAILLE FACILITIES

The current educational setup in primary schools is not conducive<sup>320</sup> for children with visual impairments. There is lack of curricula which ensures diversity in learning to accommodate

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<sup>314</sup> For example, Article 26 (1) of the Universal Declaration of Human Rights and Article 11 of the African Charter on the Rights and Welfare of the Child provide for the right to education

<sup>315</sup> B Mutingwende *Education Should Cater for Special Needs of Children With Disabilities* (2017) <http://www.spiked.co.zw> (accessed 18 September 2018)

<sup>316</sup> B Mutingwende (n 315 above) 76

<sup>317</sup> E Mandipa (n 197 above) 75

<sup>318</sup> B Mutingwende (n 315 above) 76

<sup>319</sup> B Mutingwende (n 315 above) 76

<sup>320</sup> Centre for Applied Legal Research (n 213 above) 14

children with visual impairments.<sup>321</sup> This is because there are no Braille facilities so as to enable children with visual impairments to attain their education in an inclusive environment.<sup>322</sup> Lack of Braille facilities is usually as a result of lack of funding in schools. There are no resources such as appropriate augmentative and alternative modes of communication and materials<sup>323</sup> to support children with visual impairments in primary schools.<sup>324</sup> Lack of books in Braille and raised diagrams hinders progress<sup>325</sup> as these resources enhance children's learning in primary schools.<sup>326</sup> For example, eighty percent of teachers in Masvingo District identified that lack of Braille facilities are some of the problems faced by children with visual impairments.<sup>327</sup> As a result of these shortcomings, twenty six comma seven percent of teachers indicated that it was difficult to give feedback to children with visual impairments on questions involving diagrams<sup>328</sup> because their participation is restricted to oral participation only.<sup>329</sup>

Teachers indicated that because of lack of Braille facilities, children with visual impairments need to be attended to more frequently by the teacher and this has resulted in lack confidence on their part.<sup>330</sup> At times, children with visual impairments ask their friends to read for them at their own time.<sup>331</sup> This is disadvantageous because although names of animals and objects can be easily read to a child with visual impairments, without the real object, diagrams or

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<sup>321</sup> Centre for Applied Legal Research (n 213 above) 14

<sup>322</sup> J Jones, & K Janae *Educating Students with Visual Impairments in the General Education Setting* (2017). 27 <https://aquila.usm.edu/dissertations/1337> (accessed 11 August 2018)

<sup>323</sup> This is in terms of Article 24 (3) (a) of the CRPD

<sup>324</sup> Centre for Applied Legal Research (n 213 above) 14

<sup>325</sup> F E Dakwa 'A Reflection of Teachers' Perceptions on the Inclusion of Children with Visual Impairments in Ordinary Schools' (2011) Vol 1 *Zimbabwe International Journal of Open & Distance Learning* 58

<sup>326</sup> F E Dakwa (n 325 above) 58

<sup>327</sup> F E Dakwa (n 325 above) 57

<sup>328</sup> F E Dakwa (n 325 above) 58

<sup>329</sup> F E Dakwa (n 325 above) 58

<sup>330</sup> F E Dakwa (n 325 above) 57-58

<sup>331</sup> F Zindi 'Education for All Towards Inclusive Education Policy Development in Zimbabwe' (2004) Vol 16 *Zimbabwe Journal of Educational Research* 16

models, the learner may not make sense of vocabulary read.<sup>332</sup> As a result, most children with visual impairments do not attend school. Those that manage to attend school end up repeating the same classes because most of the times they would have failed to pass with required standards. Schools in Zimbabwe prepare pupils to pass exams instead of using child-directed approaches which meet the needs of all children<sup>333</sup> including children with visual impairments. According to a report in 2015 by UNICEF Zimbabwe, nineteen percent of CWDs did not proceed beyond the seventh grade.<sup>334</sup> Most primary schools in Zimbabwe are reluctant to admit children with visual impairments because of lack of Braille facilities to accommodate them.

#### 4.2.1.3 ATTITUDINAL CHALLENGES

Attitudinal challenges may be defined as negative societal beliefs about the worth of CWDs including children with visual impairments.<sup>335</sup> These beliefs play a significant role in posing barriers in attaining education by children with visual impairments.<sup>336</sup> The prevalence of cultural beliefs of portraying disability as a consequence of curses, witchcraft, punishment by ancestral spirits and promiscuity by the mother during pregnancy has led to the marginalisation and stigmatization of children with visual impairments.<sup>337</sup> These archaic beliefs are still rampant in most countries including Zimbabwe because of lack of awareness on disability issues.<sup>338</sup> As a result of this shortcoming, children with visual impairments are inhumanely treated and are viewed as objects of charity who should live on handouts.<sup>339</sup> This is another contributory factor to the misconception that children with visual impairments cannot live an independent life.<sup>340</sup> This attitude has resulted in the stereotyping of children with visual impairments and the use of derogatory terms towards them. For example, a child

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<sup>332</sup> J Jones, & K Janae (n 322 above) 29

<sup>333</sup> F Zindi (n 331 above) 16

<sup>334</sup> *'The plight of deaf and dumb children in education'* Manica Post 20 December, 2011 It was reported that 75 per cent of children with disabilities never complete primary school in Zimbabwe.

<sup>335</sup> Unpublished: S Y Stofile *'Factors affecting the implementation of inclusive education policy: A case study in one province in South Africa University'* Unpublished PHD Thesis, University of Western Cape, (2008) 60

<sup>336</sup> Unpublished: S Y Stofile (n 335 above) 60

<sup>337</sup> E Mandipa (n above 197) 74

<sup>338</sup> E Mandipa (n above 197) 74

<sup>339</sup> E Mandipa (n above 197) 74

<sup>340</sup> Unpublished: S Y Stofile (n 335 above) 61

with visual impairments is addressed as *bofu* and not just a child. This attitude fails to take into consideration that every child is a child first before talking about their disability.<sup>341</sup> Certain schools in Zimbabwe are still being addressed using derogatory names. Of noteworthy is the Copota School for the Blind which can be translated to mean *chikoro chemapofu*. These terms are not disability friendly at all.<sup>342</sup>

Children with visual impairments also face attitudinal challenges from their parents. Some parents are against their children going to school because they feel that their children are inferior and are incapable of achieving anything in life.<sup>343</sup> Most parents and guardians of children with visual impairments are not aware that their children have the right to free basic education. Some of the parents of children with visual impairments even hide these children away.<sup>344</sup>

#### 4.2.1.4 LABELLING AND NEGATIVE ATTITUDES BY TEACHERS AND OTHER PUPILS

Regular primary school teachers are not equipped and sensitized on teaching and accommodating children with visual impairments.<sup>345</sup> As a result, children with visual impairments are treated negatively by their teachers because of the teachers' lack of expertise in teaching exclusive classes.<sup>346</sup> It has been noted that the teachers' type of training influences his or her attitude towards CWDs.<sup>347</sup> As such, twenty seven comma seven percent of the teachers in Masvingo District believe that children with visual impairments retard the progress of other children.<sup>348</sup> Even though some teachers are assisted by specialist teachers in resource rooms, sometimes these specialists come in too late for their colleagues in ordinary

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<sup>341</sup> Unpublished: S Y Stofile (n 335 above) 61

<sup>342</sup> E Mandipa (n above 197) 75

<sup>343</sup> E Mandipa (n above 197) 74

<sup>344</sup> E Mandipa (n above 197) 74

<sup>345</sup> A Weisel & H Tur-Kaspa (2002) Effects of Labels and Personal Contact on Teachers' Attitudes Toward Students With Special Needs, Exceptionality <http://www.tandfonline.com> (accessed 11 August 2018)

<sup>346</sup> A Weisel & H Tur-Kaspa (n 345 above)

<sup>347</sup> K Mataruse 'Gender race and social class on dyscalculia' (2002) Vol 7 *African Journal of Special Needs Education* 8

<sup>348</sup> F. E Dakwa (n 325 above) 58

classes.<sup>349</sup> Specialist teachers in resource centres are not trained in the content subject areas taught in classrooms thus inclusion of children with visual impairments become impossible.<sup>350</sup> In the end, teachers continue to teach children as if they are all of the same ability.<sup>351</sup> Children with visual impairments are also discriminated against by their visually acute counterparts. As a result, it is difficult for children with visual impairments to feel comfortable enough to participate during lessons.<sup>352</sup> Discrimination is also rampant in schools where children with visual impairments are not given adequate attention because children with visual impairments are perceived to be slow learners.<sup>353</sup>

#### 4.2.1.5 SHORTAGE OF TRAINED TEACHERS

Inadequate teacher training impacts heavily on the attainment of inclusive education by children with visual impairments.<sup>354</sup> Inclusive education is not part of teachers' training in Teachers' Training Colleges.<sup>355</sup> As a result, teachers graduate without the requisite knowledge on how to teach inclusive classes.<sup>356</sup> Under these circumstances, it is difficult for children with visual impairment to attain education in mainstream primary schools.<sup>357</sup> Most of the times, children with visual impairments end up being exposed to corporal punishment by their teachers as a result of failure to understand 'simple' basic concepts being taught as expected by the teachers.<sup>358</sup>

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<sup>349</sup> F E Dakwa (n 325 above) 56 A resource room is a special staffed and equipped room to which blind and partially seeing children enrolled in regular classrooms come at scheduled intervals or as the need arises.

<sup>350</sup> F E Dakwa (n 325 above) 56

<sup>351</sup> F E Dakwa (n 325 above) 56

<sup>352</sup> J Jones, & K Janae (n 322 above) 27

<sup>353</sup> F Zindi (n 331 above) 16

<sup>354</sup> J Jones, & K Janae (n 322 above) 27

<sup>355</sup> E Mandipa (n 197 above) 81

<sup>356</sup> E Mandipa (n 197 above) 81

<sup>357</sup> J Jones, & K Janae (n 322 above) 27

<sup>358</sup> J Jones, & K Janae (n 322 above) 26

#### 4.2.1.6 PHYSICAL BARRIERS

Infrastructure in schools is not disability friendly. Buildings and classrooms in mainstream schools are inaccessible.<sup>359</sup> There are no voice commands in classrooms, toilets or any other building that a child with visual impairments has access to.<sup>360</sup> Children with visual impairments are therefore not adequately catered for in the mainstream education system.<sup>361</sup> Those children who manage to attend school end up dropping out because of lack of a conducive environment.<sup>362</sup> Lack of proper infrastructure limits the movements of children with visual impairments within the school compound.<sup>363</sup> Lack of elevators, lack of voice commands in classrooms and other buildings at schools impede the mobility of children with visual impairments who at most have to rely on the goodwill of their visually acute counterparts for movement.<sup>364</sup>

#### 4.2.1.7 LOCATION OF PRIMARY SCHOOLS

Most schools especially in the rural areas, are located in remote areas. This makes it difficult for children with visual impairments to travel to and from school every day. Most of these children do not have escorts to help them to travel to and from school. As a result, children with visual impairments take long to travel to school and this hinders their performance academically. In urban areas, although children with visual impairments rely on commuter omnibuses to take them to school, they still rely heavily on the assistance of an escort.<sup>365</sup> This becomes expensive and some parents or guardians of children with visual impairments cannot afford transport fares as well as remuneration for escorts.<sup>366</sup> Ultimately, some of the children with visual impairments end up missing school on some days and others drop out completely.

#### 4.2.1.8 VIOLENCE AND BULLYING IN SCHOOLS

Children with visual impairments are exposed to bullying and violence in primary schools. This is usually the case because other children usually discriminate against children with

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<sup>359</sup> E Mandipa (n 197 above) 74

<sup>360</sup> E Mandipa (n 197 above) 81

<sup>361</sup> E Mandipa (n 197 above) 81

<sup>362</sup> J Jones, & K Janae (n 322 above)

<sup>363</sup> K Mataruse (n 347 above) 10

<sup>364</sup> A Weisel & H Tur-Kaspa (n 345 above)

<sup>365</sup> J Jones, & K Janae (n 322 above) 24

<sup>366</sup> J Jones, & K Janae (n 322 above) 24

visual impairments.<sup>367</sup> Most children are brought up in societies where they are made to believe that visual disability is as a result of a curse or witchcraft.<sup>368</sup> As a result of this misconception, other children physically and emotionally assault children with visual impairments.<sup>369</sup> This leads to a negative attitude towards school by children with visual impairments.<sup>370</sup> The attitude of other children in schools has significant impact on the learners' psychological and social adjustment.<sup>371</sup>

#### 4.2.1.9 DELAYED INDUCTION IN BRAILLE

Some children with visual impairments have problems in comprehending things that are in Braille. This is because Braille is a slow medium by which a good reader can cover only a small fraction of the material that can be read by a visually acute child in the same amount of time.<sup>372</sup> This slowness reduces the information and experience which children with visual impairments can derive from reading.<sup>373</sup> As a result, children with visual impairments are limited in experience and acquisition of knowledge.<sup>374</sup> They appear as if they are slow learners when in fact, they are limited by this circumstances. When it comes to exams, children with visual impairments are expected to attain better marks just like their visually acute counterparts.<sup>375</sup>

#### 4.2.1.10 NON-PERFORMANCE IN EXTRA CURRICULUM ACTIVITIES

Children with visual impairments are unable to participate in extramural activities because of lack of adequate facilities to accommodate them.<sup>376</sup> In Masvingo District, seventy-three comma three percent of the teachers confirmed that children with visual impairments rarely participate in sports such as athletics, football and volleyball.<sup>377</sup> This is a setback because

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<sup>367</sup> Unpublished: M Rosta 'The Nature and Extent of Bullying Among Pupils With Visual Impairments In Zambia: A Case Of Selected Special Residential Schools For The Blind.' Unpublished LLM Thesis, University of Zambia, (2011) 26

<sup>368</sup> E Mandipa (n above 197) 74

<sup>369</sup> Unpublished: M Rosta (n 367 above) 26

<sup>370</sup> Unpublished: M Rosta (n 367 above) 26

<sup>371</sup> Unpublished: M Rosta (n 367 above) 27

<sup>372</sup> J Jones, & K Janae (n 322 above) 28

<sup>373</sup> J Jones, & K Janae (n 322 above) 28

<sup>374</sup> J Jones, & K Janae (n 322 above) 31

<sup>375</sup> J Jones, & K Janae (n 322 above) 31

<sup>376</sup> F. E Dakwa (n 325 above) 59

<sup>377</sup> F. E Dakwa (n 325 above) 59

some of the children with visual impairments are not academically gifted but might be good in extramural activities.

#### 4.3 THE REALISATION OF THE RIGHT TO INCLUSIVE PRIMARY EDUCATION IN SOUTH AFRICA

South Africa is under an obligation<sup>378</sup> to provide inclusive primary education to CWDs including children with visual impairments.<sup>379</sup> Since 1994, South Africa has been in the process of educational transformation aimed at the development of a more inclusive society.<sup>380</sup> It has developed outstanding policies to address the different needs of all learners in the education system deriving guidelines from international instruments.<sup>381</sup> Inclusive education is therefore realisable in primary schools of South Africa.

##### 4.3.1 THE REALISATION OF THE RIGHT TO INCLUSIVE EDUCATION

Children with visual impairments in South Africa are entitled to attend ordinary public primary schools and enjoy their right to education in mainstream settings. This is because the South African Schools Act (SASA)<sup>382</sup> directs ordinary public schools to admit learners and serve their educational requirements without unfairly discriminating in any way.<sup>383</sup> This provision entails that all schools should be full service schools adequately equipped and supported for the full range of learning needs among all our learners.<sup>384</sup> In light of this provision, school authorities cannot refuse to enrol a child with visual impairments but have to admit him or her and serve their educational needs without discrimination. Further, a public school also has to ensure the availability of facilities such as Braille to adequately cater for the learning needs of children with visual impairments.

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<sup>378</sup> South Africa ratified the CRPD in 2007

<sup>379</sup> Green & Engelbrecht *An Introduction to inclusive education: Responding to the Challenges of Inclusive Education in Southern Africa* (1948) 8

<sup>380</sup> P Du Plessis 'Legislation and Policies: Progress towards the right to inclusive education' (2013) *De Jure* 81

<sup>381</sup> P Du Plessis (n 380 above) 81

<sup>382</sup> Act 84 of 1996

<sup>383</sup> Section 5 (1) of the South African Schools Act

<sup>384</sup> P Du Plessis (n 380 above) 80

Children with visual impairments in South Africa fully realise their right to inclusive primary education because school buildings are readily accessible to children with visual impairments as required by the SASA.<sup>385</sup> The Act obligates public schools to take all reasonable measures to ensure that the physical facilities are accessible to disabled persons.<sup>386</sup> The SASA further obligates schools to provide the necessary support for the needs of CWDs including children with visual impairments.<sup>387</sup> This means that elevators, toilets and classrooms have automated voice commands so as to ease the mobility of children with visual impairments at school. In addition, schools must have Braille facilities and trained teachers so that children with visual impairments may attain their education in mainstream schools. It should therefore be noted that the SASA is a shift from the past and accords all children the right to education that fits their needs.<sup>388</sup> One may conclude that the SASA promotes and advances the right to inclusive education.

Under the policy framework, the Department of Education issued a policy document called the White Paper 6: Special Needs Education, Building an Inclusive Education and Training System (the Paper) as a response to the post-apartheid state of special needs and support services in education and training.<sup>389</sup> In the Paper, the Ministry of Education makes a commitment to provide educational opportunities in particular for those learners who have experienced barriers<sup>390</sup> before or who have dropped out of schools because of the inability of the education system to accommodate their special needs.<sup>391</sup> The Paper is based on the constitutional provisions that emphasise the right to basic education,<sup>392</sup> equality and non-discrimination.<sup>393</sup> It states that different learning needs arise from a range of factors including sensory impairments, nature of curriculum, the medium of instruction, poor teaching and

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<sup>385</sup> Section 12 (5) of the South African Schools Act

<sup>386</sup> Section 12 (5) of the South African Schools Act

<sup>387</sup> Section 5 (1) as read with Section 12 (4) of the South African Schools Act

<sup>388</sup> P Du Plessis (n 380 above) 78

<sup>389</sup> Education White Paper 6: Special Needs Education, Building an Inclusive Education and Training system (2001) 9 <http://www.info.gov.za/whitepapers/2001/educ6.pdf> (accessed 11 July 2018)

<sup>390</sup> Education White Paper 6 (n 389 above) 16

<sup>391</sup> Parliamentary Monitoring Group *Inclusive Education: Status, Accompanying Challenges and Strategic Response* (2010) 6 <http://www.pmg.org.za/report/20101109> (accessed 11 July 2018)

<sup>392</sup> Section 9 (2) of the Constitution

discriminatory attitudes.<sup>394</sup> The Paper clearly defines inclusive education<sup>395</sup> and it moves away from using categories of disabilities as an organising principle for institutions.<sup>396</sup> It is a milestone in the history of inclusive primary education in South Africa as it clearly establishes the framework for inclusive education.

#### 4.3.2 SCREENING OF CHILDREN WITH VISUAL IMPAIRMENTS IN EDUCATION

The provision of education for learners with disabilities is based on the degree and type of support needed to overcome the impact of disability.<sup>397</sup> Learners requiring a low level of support would attend ordinary schools where teachers are trained to be able to cater for their needs.<sup>398</sup> Learners who need moderate support would attend full service<sup>399</sup> schools which are well equipped to provide for a greater range of learning needs than can be accommodated at an ordinary school.<sup>400</sup> Each district is to have at least one full services school.<sup>401</sup> In addition, learners requiring a high level of support would attend special schools<sup>402</sup> which would also serve as the resource centres for ordinary and full services schools.<sup>403</sup> The Paper proposes the education of all learners in inclusive schools and the establishment of special needs schools which serve as a support centres for inclusive schools is to enable inclusion of learners with high or very high support needs to learn within regular schools.<sup>404</sup> From the above, one may

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<sup>393</sup> Education White Paper 6 (n 389 above) 11

<sup>394</sup> Education White Paper 6 (n 389 above) 17

<sup>395</sup> Education White Paper 6 (n 389 above) 16-17 The Paper emphasises that inclusive education may include, *inter alia*, acknowledging that all children and youth can learn and that all children and youth need support, enabling education structures, systems and learning methodologies to meet the needs of all learners and changing attitudes, behaviour, teaching methods, curricula and environment to meet the needs of all learners and maximising the participation of all learners in the culture and the curriculum of educational institutions and uncovering and minimising barriers to learning

<sup>396</sup> Education White Paper 6 (n 389 above) 10

<sup>397</sup> Education White Paper 6 (n 389 above) 15

<sup>398</sup> Education White Paper 6 (n 389 above) 15

<sup>399</sup> A full-service school is an ordinary school which is specially equipped to assist students with barriers to learning within the mainstream school system

<sup>400</sup> Education White Paper 6 (n 389 above) 15

<sup>401</sup> Education White Paper 6 (n 389 above) 30

<sup>402</sup> Education White Paper 6 (n 389 above) 15

<sup>403</sup> Education White Paper 6 (n 389 above) 34

<sup>404</sup> Parliamentary Monitoring Group (n 391 above) 21-22

note that a child with visual impairments may attend either an ordinary school, a full service school or a special school depending on the severity of their impairment. Teachers in these schools are trained on inclusive education and on how to handle the special needs of children with visual impairments thereby supporting children with visual impairments in attaining their education in an inclusive environment.

#### 4.3.3 TEACHER TRAINING

Teachers are said to be the primary source for achieving inclusive education.<sup>405</sup> In South Africa, teachers in schools are trained on inclusive education and on how to handle the special needs of LWDs including children with visual impairments.<sup>406</sup> This ensures that children with visual impairments get the necessary support in attaining their education in an inclusive environment. Teachers are therefore trained so that their skills improve and for them to develop new ones.<sup>407</sup> Staff development at schools and district level are critical to putting in place successful integrated educational practices.<sup>408</sup> In mainstream education, teachers are trained to prepare main lessons with variations that are responsive to individual learner needs, co-operative learning curriculum enrichment and dealing with learners with behavioural challenges.<sup>409</sup>

In special schools, priorities include orientation to new roles within district support services of support to neighbourhood schools as well as new approaches that focus on problem solving and the development of learners' strengths and competencies rather than solely focusing on their shortcomings.<sup>410</sup> In full-service schools, teachers are trained on focusing on multi-level classroom instruction, co-operative learning, problem solving and the development of learners' strengths and competencies rather than focusing on their shortcomings.<sup>411</sup> All the education support personnel within district support services will be orientated to and trained in their new roles of providing support to all teachers and other

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<sup>405</sup> Education White Paper 6 (n 389 above) 18

<sup>406</sup> Education White Paper 6 (n 389 above) 18

<sup>407</sup> Education White Paper 6 (n 389 above) 18

<sup>408</sup> Education White Paper 6 (n 389 above) 18

<sup>409</sup> Education White Paper 6 (n 389 above) 18

<sup>410</sup> Education White Paper 6 (n 389 above) 18

<sup>411</sup> Education White Paper 6 (n 389 above) 19

educators.<sup>412</sup> This training focuses on supporting all learners, educators and the system as a whole so as to meet the learning needs.<sup>413</sup>

To ensure full realisation of inclusive education, emphasis is placed on, *inter alia*, the development of good teaching strategies that will be of benefit to all learners and overcoming barriers in the system that prevent it from meeting the full range of learning needs.<sup>414</sup> To constantly develop professional capacity of teachers, the learning and teaching methods have to be improved.<sup>415</sup> There is need to address barriers to learning that arise from language and the medium of learning and instruction, teaching style and pace, time frames for the completion of curricula, learning support materials and equipment and assessment methods and techniques.<sup>416</sup> Standards for teacher education have to be regularly revised where appropriate, to address barriers to learning and to accommodate the diverse range of learning needs.<sup>417</sup> From the above, one may note that children with visual impairments have been realising their right to inclusive primary education because teachers and educators are well equipped to handle their needs. Effective teacher training has produced an enhanced inclusive primary education system in South Africa.

#### 4.3.4 WHITE PAPER: KEY STRATEGIES FOR INCLUSIVE EDUCATION

In ensuring the realisation of the right to inclusive primary education, the Paper further outlines six strategies for the establishment of an inclusive education system within a time frame of twenty years from 2001 to 2021.<sup>418</sup> The first strategy is the implementation of a national advocacy and information programme in support of an inclusive education model.<sup>419</sup> This is to ensure awareness of inclusive education in every person. The second strategy is the conversion of special schools into resource centres.<sup>420</sup> The third strategy is the establishment of full service schools.<sup>421</sup> The fourth strategy is the establishment of district-based support

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<sup>412</sup> Education White Paper 6 (n 389 above) 19

<sup>413</sup> Education White Paper 6 (n 389 above) 19

<sup>414</sup> Education White Paper 6 (n 389 above) 19

<sup>415</sup> Education White Paper 6 (n 389 above) 49

<sup>416</sup> Education White Paper 6 (n 389 above) 49

<sup>417</sup> Education White Paper 6 (n 389 above) 49

<sup>418</sup> Education White Paper 6 (n 389 above) 42

<sup>419</sup> Education White Paper 6 (n 389 above) 42

<sup>420</sup> Education White Paper 6 (n 389 above) 42-43

<sup>421</sup> Education White Paper 6 (n 389 above) 42-48

and institutional level support teams.<sup>422</sup> The fifth strategy entails the orientation of management, governing bodies and professional staff to inclusive education and the targeting of early identification of disabilities for intervention in the Foundation Phase.<sup>423</sup> The sixth strategy is the mobilisation of approximately two hundred and eighty thousand CWDs and youths of compulsory school going age who are outside the school system.<sup>424</sup> The inclusive education system has been implemented since 2001 and the work that has been done represents an important shift in South African Policy towards education for CWDs including children with visual impairments as the Paper is a progressive approach to the realisation of inclusive education.<sup>425</sup> Children with visual impairments in South Africa continue to receive inclusive education in mainstream schools and strategies have helped in tracking the progress of the system.

#### 4.3.5 TIME FRAME FOR THE ESTABLISHMENT AND IMPLEMENTATION OF INCLUSIVE EDUCATION

The implementation of an inclusive education system has been accorded a time-frame of twenty years starting from 2001 to 2021.<sup>426</sup> In terms of the said timeframe, there is emphasis on the establishment of immediate to short-term steps which ran from 2001 to 2003,<sup>427</sup> medium steps which ran from 2004 to 2008<sup>428</sup> and the long term steps which have been underway since 2009 and will run up to 2021.<sup>429</sup> Under the immediate to short term plan phase, the Paper aimed at implementing a national advocacy and education programme on inclusive education, designating, planning and implementing the conversion of thirty special schools to resource centres in thirty designated school districts and establishing of systems and procedures for the early identification and addressing of barriers to learning in the

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<sup>422</sup> Education White Paper 6 (n 389 above) 48

<sup>423</sup> Education White Paper 6 (n 389 above) 49

<sup>424</sup> Education White Paper 6 (n 389 above) 38-43

<sup>425</sup> Parliamentary Monitoring (n 389 above) 21

<sup>426</sup> Education White Paper 6 (n 389 above) 42

<sup>427</sup> Education White Paper 6 (n 389 above) 42

<sup>428</sup> Education White Paper 6 (n 389 above) 43

<sup>429</sup> Education White Paper 6 (n 389 above) 43

Foundation Phase in primary schools.<sup>430</sup> Under the immediate term phase, the Paper emphasises *inter alia*, transforming further education and training and higher education institutions to recognise and address the diverse range of learning needs of learners, especially disabled learners and expanding the targeted community outreach programme from the base of Government's rural and urban development nodes to mobilise disabled out-of-school children and youth in line with available resources.<sup>431</sup>

The long term phase aims at expanding provision to reach the target of three hundred and eighty special schools or resource centres, five hundred full-service schools and colleges and district support teams and the two hundred and eighty thousand out-of-school children and youths, among other things.<sup>432</sup> One may therefore note that the inclusive education system has achieved its objectives as witnessed by its successful implementation since 2001. The implementation of a national advocacy and education programme under the immediate to short term plan established the inclusive education system thereby ensuring that there is enough information in South Africa on inclusive education.

#### 4.3.6 FUNDING STRATEGY FOR THE INCLUSIVE EDUCATION

The Paper has a funding strategy, and this has ensured the successful implementation of an inclusive education system and training. This funding strategy takes into consideration human resource, financial and institutional capacities.<sup>433</sup> For the first five years, a three-pronged approach was proposed with new conditional grants from the national government, funding from the line budgets of provincial education department and donor funds constituting the major sources of funding.<sup>434</sup> In terms of the Paper, funds from the new conditional grants were to be channelled towards both the special and full service schools to provide necessary facilities and material resources such as guide dogs and voice activated computers so as to ensure an increase in access by children with visual impairments.<sup>435</sup> To implement short term activities, the Paper outlines the need for mobilisation of donor funds to increase the

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<sup>430</sup> Education White Paper 6 (n 389 above) 42-43

<sup>431</sup> Education White Paper 6 (n 389 above) 43

<sup>432</sup> Education White Paper 6 (n 389 above) 43

<sup>433</sup> Education White Paper 6 (n 389 above) 37

<sup>434</sup> Education White Paper 6 (n 389 above) 40

<sup>435</sup> Education White Paper 6 (n 389 above) 40

facilitation of national information and advocacy and mobilisation campaigns to expand access to children with visual impairments and other CWDs.<sup>436</sup>

Inclusive education has been implemented through donor funded projects as well as field testing.<sup>437</sup> Through these projects, inclusive education was implemented in one district in KwaZulu-Natal, Eastern Cape, North West, Northern Cape and Mpumalanga Provinces from 2000 until 2003.<sup>438</sup> At the end of each project, the Evaluation Reports from the Education Department indicated that pilot schools had made outstanding efforts to include learners who were previously excluded from school. In addition, with regards to field testing, the Progress Report on Special Needs/Inclusive Education by the Department of Education in 2004 indicated that the Department of Education had assigned 500 schools to be converted to Full Service schools in 30 districts that were part of the national Schools District Development Programme.<sup>439</sup> It may therefore be concluded that children with visual impairments in South Africa are realising their right to inclusive education.

#### 4.4 CONCLUSION

In this chapter, the writer conducted a situational analysis on inclusive primary education in Zimbabwe. The writer noted that children with visual impairments face various challenges in attaining education. These challenges include lack of education, lack of Braille facilities, attitudinal barriers, shortage of trained teachers and victimisation. The writer further examined South Africa on the right to inclusive primary education. On this aspect, the writer explored the South African Schools Act and the Education White Paper 6: Special Needs Education, Building an Inclusive Education and Training System. It was noted that South Africa adequately caters for the right to inclusive primary education. It was further noted that children with visual impairments in South Africa are realising their right to inclusive primary education as their rights are adequately protected by the legislative and policy frameworks.

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<sup>436</sup> Education White Paper 6 (n 389 above) 41

<sup>437</sup> Unpublished: S Y Stofile (n 335 above) 65

<sup>438</sup> Unpublished: S Y Stofile (n 335 above) 65

<sup>439</sup> Unpublished: S Y Stofile (n 335 above) 66

## CHAPTER 5: FINDINGS, CONCLUSIONS AND RECOMMENDATIONS

### 5.1 INTRODUCTION

The previous chapters explored the study under different headings. Under chapter 1, the study outlined the introduction, background, problem statement, research question, methodology, significance of the study, limitations of the study and a chapter synopsis. Under chapter 2, the study explored the international and regional framework on the right to inclusive education. It further explored the Zimbabwean national framework on the right to inclusive primary education under chapter 3. Under chapter 4, a situational analysis of Zimbabwe and South Africa was conducted. This chapter outlines the findings and conclusions of the study and thereafter makes recommendations

### 5.2 FINDINGS

#### 5.2.1 THE INTERNATIONAL AND REGIONAL FRAMEWORK

The international and regional instruments provide for the right to education and non-discrimination towards PWDs including children with visual impairments. However, they do not make provision for the right to inclusive primary education. Although the CRC provides for the right to non-discrimination and the right to education, it fails to mention the salient

issue of inclusive primary education to cater for CWDs including children with visual impairments.

In addition, the ACRWC also fails to address the right to inclusive primary education, though it addresses other prominent issues such as the right to education and prohibition of discrimination. The Convention on the Rights of Persons with Disabilities (CRPD) is a milestone achievement in the history of disability rights because it addresses the right to inclusive education for CWDs including children with visual impairments. The CRPD is an international instrument that addresses disability in a social and human rights model contrary to the medical model enunciated in the instruments preceding it. It calls upon all member States to provide inclusive education and reasonable accommodation for all CWDs including children with visual impairments.<sup>440</sup>

### 5.2.2 THE NATIONAL FRAMEWORK OF ZIMBABWE

Under the national framework of Zimbabwe, the study established that the current primary education system in Zimbabwe is not in conformity with Article 24 of the CRPD. This is because the State has failed to provide Braille facilities in primary schools. The State has also failed to avail trained teachers to assist children with visual impairments. The constitutional, legislative and policy frameworks do not provide for the right to inclusive primary education in Zimbabwe to cater for children with disabilities (CWDs) including children with visual impairments. Children with visual impairments continue to attain education in separate special schools which instils a sense of stigmatisation and inferiority in them.

#### 5.2.2.1 THE CONSTITUTIONAL FRAMEWORK

The Constitution fails dismally to address the issue of inclusive primary education to cater for CWDs including children with visual impairments. Although the Constitution provides for the right to basic state-funded education<sup>441</sup> and training,<sup>442</sup> it does not provide for inclusive primary education to ensure that children with visual impairments receive education in the mainstream primary schools. Mainstream primary schools in Zimbabwe are unable to accommodate children with visual impairments because of lack of Braille facilities and trained personnel. As a result, children with visual impairments continue to be segregated as they attain their education in special schools. The Constitution therefore fails to meet

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<sup>440</sup> Article 24 of the CRPD

<sup>441</sup> Section 75 (1) (a) of the Constitution

<sup>442</sup> Section 83 (f) of the Constitution

international standards which urge States to ensure an inclusive education system at all levels.<sup>443</sup>

#### 5.2.2.2 THE LEGISLATIVE FRAMEWORK

In addition, the writer noted that although the Education Act provides for a right to education for all,<sup>444</sup> it does not provide for the right to inclusive education in order to accommodate children with visual impairments in mainstream primary schools in line with Article 24 (2) (a) (b) of the CRPD.<sup>445</sup> Further, the Act does not prohibit discrimination on the basis of disability.<sup>446</sup> As a result of this shortcoming, primary school authorities may refuse to enrol children with visual impairments on the basis of their disability.<sup>447</sup> This is in contravention of Article 24 (2) (a) which urges State parties to ensure that children with disabilities including children with visual impairments are not excluded from free and compulsory primary education on the basis of their disability.<sup>448</sup> This is also against Article 5 which advocates for equality and non-discrimination, and Article 12 of the CRPD which advocates for equal recognition before the law.<sup>449</sup>

It was further noted that the Education Act fails to acknowledge that the current educational setup in primary schools is not conducive<sup>450</sup> for children with visual impairments. It also fails to make provision for the availing of Braille facilities and trained teachers<sup>451</sup> in line with the CRPD.<sup>452</sup> The Education Act does not obligate the Minister responsible for education to ensure the establishment of an inclusive primary education system<sup>453</sup> to cater for children with visual impairments and all the other CWDs in accordance with Article 24 (2) (a) of the CRPD. Local authorities are not under any obligation to establish and provide an inclusive

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<sup>443</sup> Article 24 (1) and (2) (a) (b) of the CRPD

<sup>444</sup> Section 4 (1) of the Education Act

<sup>445</sup> Centre for Applied Legal Research (n 213 above) 14-15

<sup>446</sup> Centre for Applied Legal Research (n 213 above) 14

<sup>447</sup> Section 4 of the Education Act prohibits discrimination on the basis of race, tribe, place of origin, nationality, ethnic origin, political opinions, colour, creed or gender but does not mention disability

<sup>448</sup> Article 24 (2) (a) of the CRPD

<sup>449</sup> Articles 5 and 12 of the CRPD

<sup>450</sup> Centre for Applied Legal Research (n 213 above) 14

<sup>451</sup> Centre for Applied Legal Research (n 213 above) 14

<sup>452</sup> This is in terms of Article 24 (1), (2) (b), (3) (a) and (4) of the CRPD

<sup>453</sup> Centre for Applied Legal Research (n 213 above) 15

education system<sup>454</sup> in line with Article 24 (2) (a) (b) of the CRPD which places a duty on the State to ensure that learners with disabilities including children with visual impairments access mainstream primary education on an equal basis.

It was established that the Disabled Persons Act (DPA) is not in conformity with Article 24 of the CRPD as it does not provide for the establishment of an inclusive education system to cater for CWDs including children with visual impairments. It was further noted that although the DPA empowers the National Disability Board (NDB) to issue adjustment orders, the NDB cannot issue adjustment orders in respect of State-owned schools and educational institutions without the consent of the Minister.<sup>455</sup> In addition, the NDB can only issue adjustment orders in relation to public buildings and premises only and not private buildings or schools.<sup>456</sup> The DPA therefore fails to meet the provisions of Article 24 on inclusive education. It was further established that the Disabled Persons Act (DPA) fails to take into account the provisions of Article 24 (3) (a) (c) which obligate State parties to facilitate the learning of braille and to ensure that the education of CWDs including children with visual impairments is delivered in the most appropriate language.<sup>457</sup> In addition, the writer examined the Children's Act. The writer established that the Children's Act fails to address rights of CWDs and the issue of inclusive education. The Children's Act does not mention the rights of CWDs let alone children with visual impairments even though CWDs are often marginalised as compared to their able-bodied counterparts.

### 5.2.2.3 THE POLICY FRAMEWORK

Under the Policy framework, it was noted that the National Disability Policy (the Policy) does not address the strategies for the implementation and establishment of an inclusive education system in Zimbabwe. It does not provide the timeframe within which an inclusive education system will be established. The Policy also fails to outline a budget for the establishment of an inclusive education system. The writer conducted a situational analysis of Zimbabwe and further noted that children with visual impairments face challenges in their attainment of inclusive education. These challenges include lack of education, lack of Braille

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<sup>454</sup> Centre for Applied Legal Research (n 213 above) 15

<sup>455</sup> Section 7 (7) of the Disabled Persons Act

<sup>456</sup> Section 7 (1) (a) (b) of the Disabled Persons Act

<sup>457</sup> Article 24 (3) (a) and (c) of the CRPD

facilities, shortage of trained teachers, bullying and delayed induction in Braille. Chapter 4 comprehensively discusses the said challenges.

### 5.3 THE SOUTH AFRICAN FRAMEWORK

The writer further noted that South Africa is one of the countries in Africa that has the best policies on inclusive education. The right to inclusive education is guaranteed by the South Africa's Schools Act (SASA) and the White Paper 6: Special Needs Education, Building an Inclusive Education and Training System (the Paper). The SASA promotes inclusive primary education by directing ordinary public schools to admit learners and serve their educational requirements without unfairly discriminating in any way.<sup>458</sup> The Act enjoins the State to provide education for children with special needs at ordinary public schools and to provide relevant educational support for such learners whenever it is reasonably practicable.<sup>459</sup> The SASA directs public schools to take reasonable measures to ensure that the physical facilities are accessible to disabled persons.<sup>460</sup>

In addition to the SASA, the writer noted that the Paper provides a comprehensive framework for the establishment, implementation and promotion of an inclusive education system. The Paper is a move away from using categories of disabilities as an organising principle for institutions.<sup>461</sup> The Paper proposes the education of all learners in inclusive schools and the establishment of special needs schools which serve as support centres for inclusive schools to enable inclusion of learners with high or very high support needs to learn within regular schools.<sup>462</sup> In terms of the Paper, a child with visual impairments may attend either ordinary schools, full service schools or special schools depending on the severity of their visual impairment. Teachers in full service, ordinary and special schools are trained in inclusive education and on how to handle the special needs of children with visual impairments.

The Paper ensures the realisation of inclusive education because it has six sound strategies which include a national advocacy and information programme,<sup>463</sup> the conversion of special

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<sup>458</sup> Section 5 (1) of the South African Schools Act

<sup>459</sup> Section 12 (4) of the South African Schools Act

<sup>460</sup> Section 12 (5) of the South African Schools Act

<sup>461</sup> Education White Paper 6 (n 389 above) 10

<sup>462</sup> Parliamentary Monitoring Group (n 391 above) 21-22

<sup>463</sup> Education White Paper 6 (n 389 above) 42

schools into resource centres<sup>464</sup> and the establishment of full-service schools.<sup>465</sup> A time frame of twenty years was provided in the Paper to establish and implement an inclusive education system. It was noted that inclusive education has been implemented since 2001<sup>466</sup> through donor funded projects as well as field testing.<sup>467</sup> It was noted that pilot schools had made tremendous efforts to include learners who were previously excluded from school.<sup>468</sup>

## 5.4 CONCLUSIONS

### 5.4.1 REALISATION OF INCLUSIVE PRIMARY EDUCATION BY CHILDREN WITH VISUAL IMPAIRMENTS IN ZIMBABWE

It was noted that although the international and regional instruments that preceded the CRPD provide for education as a human right, the issue around the content of education to be based on inclusivity was clearly brought out by Article 24 (2) of the CRPD. The CRPD requires the provision of education to children with visual impairments to be based on the concept of inclusive education. This concept entails the provision of education that ensures the effective learning of children with visual impairments in mainstream primary schools together with their visually acute counterparts based on the social and human rights model of disability.

Although Zimbabwe has ratified the CRPD, it has not been able to provide inclusive primary education to children with visual impairments. The existing legislative framework does not provide for an inclusive primary education system. Although the Constitution provides for the right to basic compulsory education on an equal basis and non-discrimination, it does not provide for the right to an inclusive education system to accommodate CWDs including children with visual impairments in primary schools. The Constitution does not make specific reference to the right to inclusive education.

In addition to the constitutional framework, the writer also explored legislative and policy frameworks. The writer noted that these frameworks do not advocate for the right to inclusive primary education. The Education Act, the Children's Act and the Disabled Persons Act do not advocate for the right to inclusive education. It was also noted that the National Disability Policy does not provide for any strategies, steps, budget and time-frame for the establishment

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<sup>464</sup> Education White Paper 6 (n 389 above) 42-43

<sup>465</sup> Education White Paper 6 (n 389 above) 42-48

<sup>466</sup> Education White Paper 6 (n 389 above) 42

<sup>467</sup> Unpublished: S Y Stofile (n 335 above) 65

<sup>468</sup> Unpublished: S Y Stofile (n 335 above) 66

and implementation of an inclusive education system. In conclusion, the constitutional, legislative and policy frameworks in Zimbabwe are not in line with Article 24 of the CRPD. The right to inclusive primary education is therefore not being realised by children with visual impairments in Zimbabwe.

## 5.5 RECOMMENDATIONS

Based on the findings and conclusions of the study, the writer proffers recommendations on the appropriate constitutional, legislative and policy measures which Zimbabwe can adopt in order to comply with the provisions of Article 24 of the CRPD. If the recommendations are adopted, Zimbabwe will be able to provide inclusive primary education to CWDs including children with visual impairments.

### 5.5.1 AMENDMENT OF THE CONSTITUTION

It is recommended that Section 83 (e) of the Constitution which deals with the provision of special facilities for the education of PWDs must be repealed as it reinforces segregation which the CRPD seeks to do away with.<sup>469</sup> In addition, Section 83 (f) which provides for the right to State-funded education must be amended to obligate the State to provide inclusive education for PWDs. Further, Section 75 (1) which provides for the right to education must be amended to incorporate the right to inclusive education. Section 75 (4) of the Constitution must also be amended to place an obligation on the State to provide education to the extent of the availability of resources in line with Article 4 (2) of the CRPD.<sup>470</sup> One may also note that Section 27 (1) (a) which urges the State to take measures to promote free and compulsory education must be amended to compel the State to provide inclusive education. The State must be obligated to facilitate the learning Braille and alternative means or modes of communication and mobility skills in primary schools,<sup>471</sup> the training on the use of Braille and employment of teachers with visual impairments to enable children with visual impairments to enjoy their right to inclusive primary education.<sup>472</sup> One may further note that Section 22 (1) which provides that persons with physical and mental disabilities have a right to be treated with dignity must be amended to incorporate persons with visual impairments and any other sensory impairments so as to ensure that this right is enjoyed by every PWD.

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<sup>469</sup> E Mandipa (n 197 above) 80

<sup>470</sup> E Mandipa (n 197 above) 79

<sup>471</sup> Facilitating the learning of Braille is in accordance with Article 24 (3) (a) of the CRPD

<sup>472</sup> Article 24 (4) of the CRPD

In addition, the Constitution must be amended to obligate the State to facilitate the training of teachers in inclusive education during their training so that teachers graduate with the requisite knowledge, skills and competencies to teach inclusive classes.<sup>473</sup> One may also note that Section 81 (1) (f) which provides for every child's right to education must be amended to include the right to inclusive education. In conclusion, one may recommend that the Constitution must be amended and incorporate the provisions of Article 24 and Article 4 (2) of the CRPD.

#### 5.5.2 AMENDMENT OF THE DISABLED PERSONS ACT

Section 5 (1) (b) of the Disabled Persons Act (DPA) should be amended to task the National Disability Board (NDB) to provide for the formulation of policies and measures designed to ensure that children with visual impairments and all the other CWDs attain education in an inclusive setting. In addition, the DPA must be amended to provide for the right to inclusive education to ensure that all PWDs attain education in an inclusive environment.<sup>474</sup> This will ensure that the Act encompasses a human rights model on disability as opposed to the charity or medical model.<sup>475</sup>

Section 7 (7) of Act which prohibits the NDB to issue an adjustment order on, *inter alia*, schools and institutions controlled by the State without the consent of the Minister should be amended to give the NDB the powers to issue adjustment orders on public schools without the consent of the Minister so that the process is efficient.<sup>476</sup> Section 7 (7) must therefore be amended to ensure the independence of the NDB in the execution of its duties rather than placing heavy reliance on the relevant Minister.<sup>477</sup>

In addition, Section 7 (1) (a) (b) which empowers the NDB to issue adjustment orders in relation to public buildings and premises only must be amended to give the NDB powers to issue adjustment orders on private buildings or schools so that children with visual impairments can easily access these schools or buildings.<sup>478</sup> It is further recommended that the DPA must be amended in its entirety so that it places obligations on the State to protect

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<sup>473</sup> E Mandipa (n 197 above) 84

<sup>474</sup> E Mandipa (n 197 above) 84

<sup>475</sup> Article 24 of the CRPD

<sup>476</sup> E Mandipa (n 197 above) 92

<sup>477</sup> E Mandipa (n 197 above) 92

<sup>478</sup> E Mandipa (n 197 above) 82-83

the rights of PWDs. This is termed the human rights model of disability.<sup>479</sup> The Act must therefore be amended to incorporate the provisions of the CRPD.<sup>480</sup>

### 5.5.3 AMENDMENT OF THE EDUCATION ACT

Section 4 (1) of the Education Act must be amended to provide for the right to inclusive education so that children with visual impairments and other CWDs can adequately enjoy the right. In addition, Section 4 (2) (a) (b) of the Act which prohibits refusal of admission of any child to any school on the basis of sex, race, colour, origin and religion, should be amended to include 'disability' as a ground upon which discrimination is prohibited<sup>481</sup> so that CWDs including children with visual impairments can enjoy the right to education. The Education Act may need to borrow from the provisions of Section 5 (1) of the South African Schools Act (SASA) which directs ordinary public schools to admit learners and serve their educational requirements without unfairly discriminating in any way.<sup>482</sup>

Further, Section 5 of the Education Act which provides for compulsory education must be amended to acknowledge the need to facilitate the learning of Braille in mainstream schools.<sup>483</sup> Section 5 must be amended to also provide for the need to avail resources such as the use of appropriate and alternative modes, means and formats of communication, educational techniques and materials to support children with visual impairments and other CWDs<sup>484</sup> in line with Article 24 (3) (a) of the CRPD. Guidance may be sought from Section 12 (4) of the SASA which directs the State to provide education for children with special needs at ordinary public schools and provide relevant educational support for such learners whenever it reasonably practicable.<sup>485</sup> Further, the Education Act may also need to incorporate Section 12 (5) of the SASA which provides that public schools must also take all reasonable measures to ensure that the physical facilities are accessible to PWDs.<sup>486</sup>

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<sup>479</sup> E Mandipa (n 197 above) 80

<sup>480</sup> E Mandipa (n 197 above) 80

<sup>481</sup> Centre for Applied Legal Research (n 213 above) 15

<sup>482</sup> Section 5 (1) of the South African Schools Act

<sup>483</sup> Centre for Applied Legal Research (n 213 above) 15

<sup>484</sup> Centre for Applied Legal Research (n 213 above) 15

<sup>485</sup> Section 12 (4) of the South African Schools Act

<sup>486</sup> Section 12 (5) of the South African Schools Act

It is further recommended that Section 7 of the Education Act which obligates the Minister to promote and enhance education must be amended to empower the Minister of Primary and Secondary Education to establish an inclusive primary education system.<sup>487</sup> The Zimbabwean system may need to borrow from Section 12 (5) of the SASA which obligates public schools to take all reasonable measures to ensure that the physical facilities are accessible to disabled persons.<sup>488</sup> Section 8 of the Education Act which places a duty on local authorities to establish and maintain primary secondary schools in their jurisdictions should be amended to obligate the local authorities to establish and maintain inclusive primary and secondary education set-ups to accommodate CWDs including children with visual impairments.<sup>489</sup>

#### 5.5.4 AMENDMENT OF THE CHILDREN'S ACT

Section 2B of the Children's Act which outlines the functions of the Child Welfare Council should be amended to place a duty on the Child Welfare Council to promote and protect the special needs of CWDs including children with visual impairments. Promotion of special needs of CWDs may include advocating for the right to an inclusive education system. The Act may need to borrow from Section 2 (h) of the South African Children's Act which provides for the recognition of special needs of CWDs. The Children's Act must also be amended to provide for the protection of children from discrimination,<sup>490</sup> the recognition of special needs of CWDs,<sup>491</sup> the protection of the well-being of children<sup>492</sup> and the promotion of self-reliance and dignity by giving due consideration to making it possible for the child to participate in educational activities while taking into account the special needs that the child might have in that regard and providing the child with suitable conditions to realise that<sup>493</sup> all of which is provided for by the Children's Act of South Africa.

In addition, Section 2A of the Children's Act which establishes the composition of the Child Welfare Council should be amended to include persons from organisations that specifically deal with the rights of CWDs as part of the Council. This is to ensure that the best interests of CWDs are taken into consideration at all costs.

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<sup>487</sup> Centre for Applied Legal Research (n 213 above) 15

<sup>488</sup> Section 12 (5) of the South African Schools Act

<sup>489</sup> Centre for Applied Legal Research (n 213 above) 15

<sup>490</sup> Section 2 (f) of the Children's Act of South Africa

<sup>491</sup> Section 2 (h) of the Children's Act of South Africa

<sup>492</sup> Section 2 (i) of the Children's Act of South Africa

<sup>493</sup> Section 11 (1) (b) (c) of the Children's Act South Africa

### 5.5.5 SETTING A CLEAR MANDATE FOR THE SPECIAL ADVISOR ON DISABILITY TO THE PRESIDENT AND THE CABINET

Although the Office of The Special Advisor on Disability to the President and the Cabinet (the Special Advisor) is in line with Article 33 of the CRPD which outlines the need for State parties to designate focal points within their governments for matters to do with the implementation of the CRPD<sup>494</sup> the role, mandate, priorities and strategies are not clear.<sup>495</sup> In addition, the qualifications of the incumbent are not known and there is need to question the role, mandate and appointment of this office.<sup>496</sup> It is recommended that the role and mandate of the Special Advisor should be clear to avoid overlapping roles with that of the National Disability Board or of the Ministry of Public Service, Labour and Social Welfare.<sup>497</sup> One may also recommend that the appointee to the office of the Special Advisor should be someone with expertise and experience in disability rights law.<sup>498</sup>

### 5.5.6 EXPANSION OF THE ROLE, DUTIES AND BUDGET OF THE MINISTRY OF PUBLIC SERVICES, LABOUR AND SOCIAL WELFARE

The writer recommends that there should be a specific budget allocated to the Ministry to address disability issues in Zimbabwe.<sup>499</sup> The amount that would have been allocated in terms of the said budget would then be used to provide for mobility aides and devices, braille facilities and assistive technology to children with visual impairments and other CWDs in schools. In addition, it is recommended that the Ministry must give priority to disability issues so as to ensure that the needs of PWDs are adequately catered for.<sup>500</sup>

### 5.5.7 EXPANSION OF THE ROLE, DUTIES AND BUDGET OF THE MINISTRY OF PRIMARY AND SECONDARY EDUCATION

It is recommended that the Ministry must be allocated a specific budget to implement an inclusive education system within a specified time frame. This budget should cater for the training of teachers in Braille, the provision of braille facilities and other assistive devices needed by children with visual impairments. In addition, the curriculum in schools should encompass the learning of Braille as a compulsory subject from elementary school so as to

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<sup>494</sup> Article 33 (1) of the CRPD

<sup>495</sup> E Mandipa, (n 197 above) 93

<sup>496</sup> E Mandipa, (n 197 above) 93

<sup>497</sup> E Mandipa, (n 197 above) 94

<sup>498</sup> E Mandipa, (n 197 above) 94

<sup>499</sup> E Mandipa (n 197 above) 94

<sup>500</sup> E Mandipa (n 197 above) 94

equip all children with the necessary skills in Braille. It is further recommended that the Ministry must organise workshops where teachers are trained in disability rights law and the issue of inclusive education so as to equip teachers on how to handle inclusive classes.

#### 5.5.8 AMENDMENT OF THE NATIONAL DISABILITY POLICY

It is recommended that the Policy should be amended in its entirety and be substituted by the contents of the White Paper 6 of South Africa which comprehensively deals with the issue of inclusive education. In line with that, the Policy must be amended to provide strategies, guidelines, time frame and budget for the establishment and implementation of an inclusive education system in Zimbabwe.

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