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The duty to provide reasonable accommodation in schools
for children with disabilities in Zambia: need for
progressive realisation for the right to education

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Dedication

For Precious Kashweka, a girl child with a disability of albinism breaking the barriers of exclusion and pursuing the right to inclusive education at Sefula High School, Mongu.

Acknowledgments

Glory be to God for his grace upon my life through whom I met many wonderful people and friends, particularly the 5th generation of the Vienna Master in Human Rights at the University of Vienna; wonderful people, to all of you, individually and severally, I am grateful guys!

Appreciation to my wife Ellen for the support rendered in so many ways during the period of study.

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Abstract

Children with disabilities just like those without have the right to education. This right to education is promoted and protected by various international human rights instruments, regional and indeed national legislation.¹ States parties have obligations to respect, protect and fulfil the right to education as arising from international treaties that each State is a party.

A descriptive approach regarding reasonable accommodation in institutions of learning for the enjoyment of the right to education by children with disabilities in Zambia was applied as the research type for the study.²

The study recommends on the access to inclusive education by children with disabilities such as introduction of affirmative action strategies among others, through the provision of reasonable accommodation with an emphasis on the need for progressive realisation for the right to education.

Kurzbeschreibung

Kinder mit Behinderungen haben, wie auch jene ohne, ein Recht auf Bildung. Dieses Recht auf Bildung ist von unterschiedlichen internationalen Menschenrechtsinstrumenten, auf regionaler sowie auf und nationaler Ebene geschützt und festgeschrieben. Vertragsstaaten haben in diesem Zusammenhang eine, sich aus den jeweiligen Verträgen ergebende Achtungs-, Schutz- und Gewährleistungspflicht.

Die vorliegende Arbeit diskutiert das Recht auf Bildung anhand menschenrechtlicher Konzepte wie dem der schrittweisen Verwirklichung, der inklusiven Bildung und der angemessener Vorkehrungen. Hierbei wurde ein deskriptiver Ansatz gewählt, um die rechtlichen Rahmenbedingungen, sowie die praktische Umsetzung des Konzepts der angemessenen Vorkehrungen in Bildungseinrichtungen für Kinder mit Behinderungen im Sambia zu beleuchten.

¹ Article 24 of the United Nations Convention on the Rights of Persons with Disabilities 2006/2008, states that “States Parties recognize the right of persons with disabilities to education. With a view to realizing this right without discrimination and on the basis of equal opportunity, States parties shall ensure an inclusive education system at all levels and lifelong learning.”

² According to Kothari, a descriptive research includes surveys and fact-finding enquiries of different kinds. The major purpose of descriptive research is the description of the state of affairs as it exists at present. The main characteristic of this method is that the researcher has no control over the variables; he/she can only report what has happened or what is happening

Die Arbeit kommt dabei zum Schluss, dass es der Implementierung unterschiedlicher Strategien bedarf, um den Zugang zu inklusiver Bildung für Kinder mit Behinderungen zu ermöglichen. In diesem Kontext sind Maßnahmen positiver Diskriminierung, wie die der angemessenen Vorkehrungen zu nennen, wobei die schrittweise Verwirklichung des Rechts auf Bildung zu betonen ist.

Key words

Affirmative action, Children with disabilities, Human rights, Inclusive Education, Progressive Realisation, Reasonable Accommodation, Right to education, Schools

Schlagwörter

Positive Diskriminierung, Kinder mit Behinderungen, Menschenrechte, Inklusive Bildung, Schrittweise Umsetzung, angemessene Vorkehrungen, Recht auf Bildung, Schulen

List of Abbreviations

- CBR - Community Based Rehabilitation
- ICESCR - International Covenant on Economic, Social and Cultural Rights (1966)
- PwDs - Persons with Disabilities
- OPDs - Organisation for/of Persons with Disabilities
- UNICEF - United Nations Children's Fund
- UNCRC - United Nations Convention on the Rights of the Child (1989)
- UNCRPD - United Nations Convention on the Rights of Persons with Disabilities (2006)
- UNESCO - United Nations Educational Scientific and Cultural Organisation
- ZAPD - Zambia Agency for Persons with Disabilities

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1. Chapter I: Introduction

The introductory chapter gives general information on the research topic. In addition, Key concepts used in the research have also been defined and explained. These include Reasonable Accommodation, principle of Progressive Realisation, Inclusive Education and Affirmative action.

The fundamental aim of a school system of education is to promote the integral, harmonious development of the physical, intellectual, affective, moral and spiritual endowments of all students so that they can develop into complete persons for their personal fulfillment and for the common good of the society of which they are already members and in whose responsibility they will share as adults.³ This is the premise on which the foundation of the education system thrives.

The right to education for children with disabilities is recognised, promoted and protected in both national legislation⁴ and core international human rights instruments that Zambia has ratified. These include the Universal Declaration of Human Rights, 1948, United Nations Convention on the Rights of Persons with Disabilities, 2006⁵, ratified in 2012,⁶ the United Nations Convention on the Rights of the Child, 1989⁷, ratified in 1990,⁸ the International Covenant on Economic, Social and Cultural Rights, 1966⁹ ratified in 1984¹⁰ and the African Charter on the Rights and

³ Ministry of Education, “Focus on Learning”, in Brendan, *The Revolution of Education in Zambia*, p.xvi

⁴ Section 15 of the Education Act No. 23 of 2011 of the Laws of Zambia provides that “A child has the right to free basic education.” Additionally, Section 24 of the Persons with Disabilities Act No. 6 of 2012 of the Laws of Zambia provides that “A parent, guardian or custodian of a child with a disability of school-going age, shall enroll the child in a school”.

⁵ Article 24 of the United Nations Convention on the Rights of Persons with Disabilities 2006/2008, states that “States Parties recognize the right of persons with disabilities to education. With a view to realizing this right without discrimination and on the basis of equal opportunity, States parties shall ensure an inclusive education system at all levels and lifelong learning:”

⁶ Preamble to the Persons with Disabilities Act, No. 6 of 2012 of the Laws of Zambia.

⁷ Article 28 of the United Nations Convention on the Rights of the Child 1989, provides that “States Parties recognize the right of the child to education, and with a view to achieving this right progressively and on the basis of equal opportunity, they shall, in particular: (a) make primary education compulsory and available free to all;”

⁸ https://www.google.at/search?source=hp&ei=-4JbW4TjOMXRwALrKH4Bw&q=when+did+zambia+ratify+the+crc&oq=when+did+zambia+ratify+the+&gs_l=psy-ab.3.0.0i22i30k1.3524.12645.0.20660.28.26.0.0.0.597.4873.2-4j6j0j3.13.0....0...1.1.64.psy-ab..15.12.4550.0..0j0i3k1j33i22i29i30k1.0.Fk53gNj8byM. Accessed 27 July 2018.

⁹ Article 13 (1) of the International Covenant on Economic, Social and Cultural Rights 1966 provides that (quoting the relevant parts only) “The States Parties to the present Covenant recognize the right of everyone to education.....” Further, article 13 (2) (a) states that “Primary education shall be compulsory and available free to all.”

¹⁰ <http://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.170.4465&rep=rep1&type=pdf#page=1&zoom=auto,-107.52>. Accessed 27 July 2018.

Welfare of the Child, 1990¹¹ signed in 1992.¹² And the African Charter on Human and Peoples' Rights (*The Banjul Charter*), 1981, ratified in 1984.¹³

Taking into account that Zambia has ratified the United Nations Convention on the Rights of Persons with Disabilities (UNCPRD), 2006, which provides a definition in article 2 under definitions of the concept or term "Reasonable Accommodation" and the fact that this research will be based on the situation about access to the right to education by children with disabilities in Zambia, the definition provided in the Persons with Disabilities Act and that provided for in the UNCPRD shall be adopted and used as one working definition for the master thesis since the definition in both instruments are by and large the same to the extent of the intent and spirit of the wording used in both.

According to section 2 of the Persons with Disabilities Act No. 6 of 2012 of the Laws of Zambia; "*Reasonable Accommodation*" means;

"Necessary and appropriate modification, adaption and adjustments, not imposing undue burden, where needed in a particular case; to ensure to persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms."

Similarly, article 2 of the United Nations Convention on the Rights of Persons with Disabilities, 2006, *Reasonable Accommodation* means;

"Necessary means and appropriate modification and adjustments not imposing a disproportionate or undue burden, where needed in a particular case, to ensure to persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms."

A descriptive approach of the legal framework and the situation obtaining on the ground regarding reasonable accommodation in institutions of learning for the enjoyment of the right to

¹¹ Article 11 (1) of the African Charter on the Rights and Welfare of the Child 1990, provides that "every child shall have the right to education". Further, sub article 3 (a) of article 11 of the Charter states that " States Parties to the present Charter shall take all appropriate measures with a view to achieving the full realisation of the this right and shall in particular: (a)provide free and compulsory basic education;"

¹²https://www.google.at/search?ei=EoNbW7eWHYLXwQLVwKuACA&q=when+did+zambia+ratify+the+african+charter&oq=when+did+zambia+ratify+the+african&gs_l=psy-ab.1.0.33i22i29i30k112.162759.172126.0.175432.10.10.0.0.0.487.1726.3-4j1.5.0....0...1.1.64.psy-ab..5.5.1724...0i22i30k1j35i39k1.0.Z7oEzU2Znks. Accessed 27 July 2018.

¹³ <http://www.achpr.org/instruments/achpr/ratification/>. Accessed 27 July 2018.

education by children with disabilities in Zambia will be reflected. More information on this descriptive type of research is given under Chapter II on the research design. By way of this descriptive analysis on the provision of education to children with disabilities, this thesis will investigate and highlight the challenges that manifest from different perspectives such as what Zambia has done on the legislative level regarding the right to education, institutional framework, poverty, traditional myths and beliefs, human rights awareness and generally society perception towards children with disabilities and their right to education on equal basis with others without disabilities.

1.1 Research problem statement

The right to education is recognised in many legislative instruments both international and national. Article 24 and General Comment No. 4 (2016)¹⁴ thereon, by the Committee on the CRPD of the United Nations Convention on the Rights of Persons with Disabilities at the international level and section 22 of the Persons with Disabilities Act no. 6 of 2012 at the national level. Zambia ratified and has domesticated the UNCRPD (major provisions especially dealing with the right and access to education)¹⁵ in 2010 and 2012 respectively.

The right to inclusive education, according to the General Comment No. 4 paragraph 9, of 2016, of the United Nations Committee on the Rights of Persons with Disabilities;

“The right to inclusive education encompasses a transformation in culture, policy and practice in all formal and informal educational environments to accommodate the differing requirements and identities of individual students, together with a commitment to remove the barriers that impede that possibility. It involves strengthening the capacity of the education system to reach out to all learners. It focuses on the full and effective participation, accessibility, attendance and achievement of all students, especially those who, for different reasons, are excluded or at risk of

¹⁴ UN Committee on the Rights of Persons with Disabilities (CRPD), *General comment No. 4 (2016), Article 24: Right to inclusive education*, 2 September 2016, CRPD/C/GC/4, available at: <http://www.refworld.org/docid/57c977e34.html>. Accessed 29 July 2018.

¹⁵ Provisions of Article 24 (Education) of the UNCRPD in its entirety is reflected and provided for in principle, for all intents and purposes (albeit with nationalized titles for institutions and officials for implementation) by sections 22, 23, 24, 25 and 26 of the Persons with Disabilities Act No. 6 of 2012 of the Laws of Zambia. It is this same Act which in its preamble states in part “.....provide for the domestication of the Convention on the Rights of Persons with Disabilities and its Optional Protocol and other international instruments on persons with disabilities to which Zambia is party, in order to promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by persons with disabilities and to promote respect for their inherent dignity....”

being marginalized. Inclusion involves access to and progress in high-quality formal and informal education without discrimination. It seeks to enable communities, systems and structures to combat discrimination, including harmful stereotypes, recognize diversity, promote participation and overcome barriers to learning and participation for all by focusing on well-being and success of students with disabilities. It requires an in-depth transformation of education systems in legislation, policy, and the mechanisms for financing, administration, design, delivery and monitoring of education.”¹⁶

Education just like all other economic, social and cultural rights, was considered by the so called Socialist States as a fundamental right and a pre-condition for the enjoyment of civil and political rights.¹⁷ In respect of the right to education, States are required to provide for free and compulsory primary education to be accorded indiscriminately to every child. The requirement to provide free primary education is reflected in key international instruments among them, article 26 of the Universal Declaration on Human Rights, article 13.2 (a) of the International Covenant on Economic, Social and Cultural Rights (ICESCR), article 28 (a) of the UN Convention on the Rights of a Child (UNCRC) and of particular reference to children with disabilities, article 24.2 (b) (c) of the UNCRPD¹⁸.

The progressive instruments and policy documents notwithstanding, the number of children with disabilities enrolled or in schools still requires much effort as the enrolment numbers for children with disabilities are low due to lack of required support and reasonable accommodation in schools or learning institutions as highlighted by the United Nations Special Rapporteur in her report at page 13, on the rights of persons with disabilities in Zambia, 2016¹⁹.

¹⁶ UN Committee on the Rights of Persons with Disabilities (CRPD), *General comment No. 4 (2016), Article 24: Right to inclusive education*, 2 September 2016, CRPD/C/GC/4, available at: <http://www.refworld.org/docid/57c977e34.html>. Accessed 29 July 2018.

¹⁷ M. Nowak, M., K.M. Januszewski, Hofstatter, *All Human Rights for All, Vienna Manual on Human Rights*, Vienna, intersentia, 2012, p.269.

¹⁸ (b) “Persons with disabilities can access an inclusive, quality and free primary education and secondary education on an equal basis with others in the communities in which they live”. (c) “Reasonable accommodation of the individual’s requirements is provided”.

¹⁹ According to data from the Ministry of General Education, some 11,250 learners with “mild” or “moderate” disabilities were enrolled in schools in 2015. However, learners considered to have more “severe” disabilities (e.g., deaf-blind children, children with Down syndrome or cerebral palsy) were not enrolled in either mainstream or special education schools. Very few students with disabilities reach the tertiary level of education (77 were enrolled in colleges in 2015) without benefiting from the required support and accommodation. It is also of concern that the education faculty is the only one currently admitting persons with disabilities, and that there is a limited choice of vocational training and careers for persons with disabilities.

General expert studies/research²⁰ and reports (such as the UN Special Rapporteur's report) have been done on the rights of persons with disabilities and access to education in Zambia. However there is none known which specifically deals with the right to education with a *human rights lens* and the principle of *progressive realisation* (see sub-chapter 1.3.2 for the definition and information on this principle) as regards the duty to provide reasonable accommodation and the affirmative action and appropriate actions as reflected in the spirit of article 24 (4) of the UNCPRD, including tax rebates/incentives for private and community schools that enrol children with disabilities (in an inclusive system) and teacher training scholarships in order to increase the number of teachers with the requisite skills for inclusive education.

1.2 Objective of the study and research questions

Therefore, this thesis will endeavour to expand on the body of knowledge for the right to education by children with disabilities in Zambia as could be achieved through the provision of reasonable accommodation with an emphasis on the need for progressive realisation as a concept of affirmative action. This will be explained by discussing the following research questions: (i) to what extent has reasonable accommodation been provided for children with disabilities in schools (learning institutions) in order to realise the right to education on an equal basis with others, from 1990s to date? (ii) What are the practical challenges and barriers that impede access to this right by children with disabilities? (iii) How can the concept of progressive realisation in the provision of reasonable accommodation be enhanced to promote the right to education for children with disabilities in Zambia?

1.3 Understanding key concepts and theories

This master thesis will be discussed in light of selected key human rights concepts and theories in order to have coherent and defined scope of discourse. The following definitions and understanding of the concepts and theories below will be used for the purpose of this master thesis.

²⁰ For example: R. Serpell, J. Folotiya, Jacqueline, *Basic Education for Children with Special Needs in Zambia Progress and Challenges in the Translation of Policy into Practice. Psychology and Developing Societies*. (2011). 23. 211–245. 10.1177/097133361102300204.; C.F. Muwana, *Zambian Student Teachers' Attitudes toward including students with Disabilities in General education Classrooms*, University of Illinois, 2012. And J.S. Munsanje, D. Kalabula, A. M. Nzala, *Inclusive education for children with visual impairments in Zambia: a situational analysis*

1.3.1 Inclusive education

Inclusive Education according to the Zambia Federation of Disability Organization²¹ is the continuous process of increasing access, participation and achievement for all children in mainstream schools. It demands improving schools for all persons. Inclusive education refers to the concept that the education system serves all children with a commitment of leaving no child behind.

At the international level, according to United Nations Committee on the Rights of Persons with Disabilities, in its General Comment No. 4 paragraph 10, of 2016, Inclusive education is to be understood as:

“a) A fundamental human right of all learners. Notably, education is the right of the individual learner, and not, in the case of children, the right of a parent or caregiver. Parental responsibilities in this regard are subordinate to the rights of the child. Article 1, para 2, Convention on the Rights of Persons with Disabilities

b) A principle that values the well-being of all students, respects their inherent dignity and autonomy, acknowledges individual requirements and ability to effectively be included in and contribute to society.

c) A means of realizing other human rights. It is the primary means by which persons with disabilities can lift themselves out of poverty, obtain the means to participate fully in their communities, and be safeguarded from exploitation. It is also the primary means through which to achieve inclusive societies.

d) the result of a process of continuing and pro-active commitment to eliminate barriers impeding the right to education, together with changes to culture, policy and practice of regular schools to accommodate and effectively include all students.”

Inclusive education is an ongoing process aimed at offering quality education for all while respecting diversity and the different needs and abilities, characteristics and learning expectations of the students and communities, eliminating all forms of discrimination.²²

²¹ Zambia Federation of Disability Organization, 2011

²² United Nations Educational Scientific and Cultural Organisation, 2008, p.8

Therefore, the features of inclusive education, according to the United Committee General Comment No. 4 of 2016 on the United Nations Convention of the Rights of Persons with Disabilities, 2006, the core features of inclusive education are:²³

a) Whole systems approach: education ministries must ensure that all resources are invested toward advancing inclusive education, and toward introducing and embedding the necessary changes in institutional culture, policies and practices.

b) Whole educational environment: the committed leadership of educational institutions is essential to introduce and embed the culture, policies and practices to achieve inclusive education at all levels: classroom teaching and relationships, board meetings, teacher supervision, counselling services and medical care, school trips, budgetary allocations and any interface with parents of learners with and without disability when applicable, the local community or wider public.

c) Whole person approach: recognition is given to the capacity of every person to learn, and high expectations are established for all learners, including learners with disabilities. Inclusive education offers flexible curricula, teaching and learning methods adapted to different strengths, requirements and learning styles. This approach implies the provision of support and reasonable accommodation and early intervention so that they are able to fulfil their potential. The focus is on learners' capacities and aspirations rather than content when planning teaching activities. It commits to ending segregation within educational settings by ensuring inclusive classroom teaching in accessible learning environments with appropriate supports. The education system must provide a personalized educational response, rather than expecting the student to fit the system.

d) Supported teachers: All teachers and other staff receive education and training giving them the core values and competencies to accommodate inclusive learning environments, which include teachers with disabilities. The inclusive culture provides an accessible and supportive environment which encourages working through collaboration, interaction and problem-solving.

²³ UN Committee on the Rights of Persons with Disabilities (CRPD), *General comment No. 4 (2016), Article 24: Right to inclusive education*, 2 September 2016, CRPD/C/GC/4, available at: <http://www.refworld.org/docid/57c977e34.html>. Accessed 29 July 2018

e) Respect for and value of diversity: All members of the learning community are welcomed equally, with respect for diversity according to, inter alia, disability, race, colour, sex, language, linguistic culture, religion, political or other opinion, national, ethnic, indigenous or social origin, property, birth, age or other status. All students must feel valued, respected, included and listened to. Effective measures to prevent abuse and bullying are in place. Inclusion takes an individual approach to students.

f) Learning-friendly environment: Inclusive learning environments must create an accessible environment where everyone feels safe, supported, stimulated and able to express themselves, with a strong emphasis on involving students themselves in building a positive school community. Recognition is afforded to the peer group in learning, building positive relationships, friendships and acceptance.

g) Effective transitions: Learners with disabilities receive the support to ensure the effective transition from learning at school to vocational and tertiary education, and finally to work. Learners' capacities and confidence are developed and learners receive reasonable accommodation and equality regarding assessment and examination procedures, and certification of their capacities and attainments on an equal basis with others.

h) Recognition of partnerships. Teacher associations, student associations and federations and OPDs, school boards, parent-teacher associations, and other functioning school support groups, both formal and informal, are all encouraged to increase their understanding and knowledge of disability. Involvement of parents/caregivers and the community must be viewed as assets with resources and strengths to contribute. The relationship between the learning environment and the wider community must be recognized as a route towards inclusive societies.

i) Monitoring: As a continuing process, inclusive education must be monitored and evaluated on a regular basis to ensure that segregation or integration is not happening either formally or informally. Monitoring, according to article 33, should involve persons with disabilities, including children and persons with intensive support requirements, through OPDs, as well as parents or caregivers of children with disabilities where appropriate. Disability-inclusive indicators must be developed and used consistent with the 2030 Agenda for Sustainable Development.

The Leonard Cheshire Disability defines inclusive education as;

*“Children learning together in the same classroom, using materials appropriate to their various needs, and participating in the same lessons and recreation: that is inclusive education”.*²⁴

In an inclusive school, children with disabilities do not study in separate classes; instead teaching methods, textbooks, materials, and the school environment are designed so that girls and boys with a range of abilities and disabilities, including physical, sensory, and intellectual and mobility impairments can be included in the same class.²⁵

By definition, inclusive education includes all learners, but it may be interpreted differently according to the context. For example, while it covers children excluded on the basis of language, gender, ethnicity, disability and other factors, Leonard Cheshire Disability focuses on children with disabilities. At the same time, we recognise that children may be affected by more than one issue. A disabled child may also speak the language of a minority ethnic group, or be a refugee, or, if she is a girl, her family and society may not value girls’ education. We believe that making schools inclusive for boys and girls with disabilities improves them for all learners, including students facing exclusion because of other challenges, or more than one issue.²⁶

More specifically regarding teacher education, Ballard (2003) says that inclusive education is concerned with issues of social justice, which means that graduates entering the teaching profession should *‘understand how they might create classrooms and schools that address issues*

²⁴ Leonard Cheshire Disability, *Inclusive Education: An introduction*, p.7, available on https://www.leonardcheshire.org/sites/default/files/LCD_InclusiveEd_012713interactive.pdf. Accessed 28 July 2018. Additional notes available on the same link: Leonard Cheshire Disability is a UK-based organisation with five regional offices in Africa and Asia. Their joint projects with partner organisations support children with disabilities to go to school, adults with disabilities to earn a living, and all disabled people to access the rehabilitation, health and other support they need. They also campaign to change attitudes and improve services, and their 50 years of international experience is backed up by their inclusive development research Centre run jointly with University College London. All of this puts them in a prime position to share good practice and innovation through the Leonard Cheshire Disability Global Alliance, a network of disability and development organisations in 54 countries.

²⁵Ibid

²⁶ Leonard Cheshire Disability, *Inclusive Education: An introduction*, p.7, available on https://www.leonardcheshire.org/sites/default/files/LCD_InclusiveEd_012713interactive.pdf. Accessed 28 July 2018. Additional notes available on the same link: Leonard Cheshire Disability is a UK-based organisation with five regional offices in Africa and Asia. Their joint projects with partner organisations support children with disabilities to go to school, adults with disabilities to earn a living, and all disabled people to access the rehabilitation, health and other support they need. They also campaign to change attitudes and improve services, and their 50 years of international experience is backed up by their inclusive development research Centre run jointly with University College London. All of this puts them in a prime position to share good practice and innovation through the Leonard Cheshire Disability Global Alliance, a network of disability and development organisations in 54 countries.

of respect, fairness and equity. As part of this endeavor, they will need to understand the historical, socio-cultural and ideological contexts that create discriminatory and oppressive practices in education. The isolation and rejection of disabled students is but one area of injustice. Others include gender discrimination, poverty and racism'

The right to access to education and quality thereof will be discussed in the context and light of the principles of access to education for children with disabilities as espoused by the United Nations Committee on the Rights of Persons with Disabilities in its General Comment No. 4, thus, Accessibility, Availability, Acceptability and Adaptability.²⁷

The Committee on the Rights of Persons with Disabilities (CRPD) is the body of independent experts that monitors implementation of the Convention by States Parties. All States parties are obliged under Article 35 of the United Nations Convention the Rights of Persons with Disabilities, 2006, to submit regular reports to the Committee on how the rights are being implemented²⁸. States must report initially within 2 years of accepting the Convention and thereafter every 4 years. The Committee examines each report and makes suggestions and general recommendations on the report to the State Party concerned²⁹.

The Optional Protocol to the Convention gives the Committee competence to examine individual complaints with regard to alleged violations of the Convention by State Parties to the Protocol.

1.3.2 Progressive realisation

Obligation by States to work towards the provision of the right to education for all (and other rights) is anchored on the *principle of Progressive Realisation* which entails that States parties are required to take all necessary steps and measures according to their respective political,

²⁷ According to the United Nations Committee on the Rights of Persons with Disabilities' General Comment No. 4 on the right to inclusive education, inclusive education can be understood as a "principle that values the well-being of all students, respects their inherent dignity and autonomy, and acknowledges individual's requirements and their ability to effectively be included in and contribute to society". Furthermore, it is also "The result of a process of continuing and proactive commitment to eliminating barriers impeding the right to education, together with changes to culture, policy and practice of regular schools to accommodate and effectively include all students." In order to be fulfilled, "the education system must comprise four interrelated features: availability, accessibility, acceptability and adaptability."

²⁸ CRPD, Article 35

²⁹ Committee on the Rights of Persons with Disabilities. Available on <http://www.ohchr.org/EN/HRBodies/CRPD/Pages/CRPDIndex.aspx>

economic and financial capacities to progressively fulfil the realisation of all human rights for all people under their jurisdiction.³⁰

The right to education which falls under the 2nd generation of rights commonly referred to as economic, social and cultural rights³¹ calls for States to undertake positive measures that can reasonably be expected of them subject to the *principle of due diligence*³² towards its obligation to fulfil this right among other rights.

The United Nations Committee on the Rights of persons with Disabilities in its General Comment No. 4 paragraph 39, of 2016,³³ states that;

Article 4.2 requires that States parties undertake measures to the maximum of their available resources regarding economic, social and cultural rights, and, where needed, within a framework of international cooperation, with a view to achieving progressively the full realisation of those rights. Progressive realization means that States parties have a specific and continuing obligation “to move as expeditiously and effectively as possible” towards the full realization of article 24.12, this is not compatible with sustaining two systems of education: mainstream and special/segregated education systems. Progressive realization must be read according to the overall objective of the Convention to establish clear obligations for States parties in respect of the full realization of the rights in question. Similarly, States parties are encouraged to redefine budgetary allocations for education, including transferring budgets to develop inclusive education. Any deliberately retrogressive measures in that regard must not disproportionately target learners with disabilities at any level of education.¹³ They must be only a temporary measure limited to the period of crisis, be necessary and proportionate, not be discriminatory and comprise all possible measures to mitigate inequalities. Progressive realization does not prejudice those obligations that are immediately applicable. Drawing from CESCR’s General Comment, States parties have “a minimum core obligation to ensure the

³⁰ M. Nowak, K. M. Januszewski, Hofstatter, *All Human Rights for All, Vienna Manual on Human Rights*, intersentia Vienna, 2012, p.271

³¹ See footnote 4 above.

³² M. Nowak, K. M. Januszewski, Hofstatter, *All Human Rights for All, Vienna Manual on Human Rights*, intersentia Vienna, 2012, p.271-272

³³ UN Committee on the Rights of Persons with Disabilities (CRPD), *General comment No. 4 (2016), Article 24: Right to inclusive education*, 2 September 2016, CRPD/C/GC/4, available at: <http://www.refworld.org/docid/57c977e34.html>. Accessed 29 July 2018

satisfaction of, at the very least, minimum essential levels” of each of the features of the right to education.

Therefore, the principle of progressive realisation in the provision of reasonable accommodation for the realisation of the right to education for children with disabilities in Zambia will be the main focus of the thesis.

1.3.3 Reasonable accommodation

There seems to be a universal definition for the concept of *reasonable accommodation* given the definition in the United Nations Convention on the Rights of Persons with Disabilities, 2006, which Convention has been signed by many States, even though States parties may have somewhat different definition from one jurisdiction to the other. In the case of Zambia, the definition of reasonable accommodation are the same by and large. Therefore, the working definition for reasonable accommodation will be in accordance with the provisions of the Persons with Disabilities Act No. 6 of 2012 of the Laws of Zambia, as read together with the definition in the United Nations Convention on the Rights of Persons with Disabilities, 2006, since Zambia has ratified the Convention.

Accordingly, section 2 of Persons with Disabilities Act No. 6 of 2012, of the Laws of Zambia which defines reasonable accommodation as follows;

“Means necessary and appropriate modification, adaption and adjustments, not imposing undue burden, where needed in a particular case; to ensure to persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms.”

On the other hand, article 2 of the United Nations Convention on the Rights of Persons with Disabilities, 2006, defines Reasonable Accommodation as follows;

“Means necessary and appropriate modification, and adjustments, not imposing a disproportionate or undue burden, where needed in a particular case, to ensure to persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms”.

Although the notion of ‘disabilities’ entails varied conditions, abilities, difficulties and needs, there is limited consensus on viable means of addressing this diversity in educational provision.

Mainstream educational systems typically address a narrow band of learning needs and do not reflect the diversity of abilities, interests and language that all pupils bring to the classroom. When pupils with disabilities receive education, it is often in segregated classes or schools where valuable physical, medical, behavioural and pedagogical support can be provided. However, underlying notions of ‘individual deficit’ and persistent discriminatory attitudes often limit their curricular options and perpetuate large scale institutionalization, failing to offer equal and meaningful education to children with disabilities and exacerbating their isolation in society.³⁴

The inability of mainstream education systems to recognize and respond to diverse learning needs is the real barrier to learning. To be inclusive, educational systems must offer differentiation, accommodations and modifications within the general curriculum and include early training in orientation, mobility skills and alternative communication.³⁵

States under the framework of international human rights law, have an obligation to provide reasonable accommodations to ensure non-exclusion from education for persons with disabilities. Failure to provide reasonable accommodation constitutes discrimination on disability grounds.³⁶

1.3.4 Affirmative action (The theory of inducements)

Per Stone³⁷, *“inducements work not through direct force, but by getting people to change their minds. The theory rests of a utilitarian model of human behavior. People are assumed to be rational. They have goals and each decision to act is predicated on conscious goal-seeking. Every action is first a mental decision based on an economic calculus: which of the possible actions I could take will get me to my goal in the easiest or cheapest way? The theory of inducements says we can alter people’s self-propelled progress toward their goals by changing the obstacles and opportunities they face.”*

³⁴ United Nations Educational Scientific and Cultural Organisation (UNESCO) Policy Brief on Early Childhood Inclusion of Children with Disabilities: The Early Childhood Imperative, N° 46 / April – June 2009 p.2

³⁵ Ibid

³⁶ UN Committee on the Rights of Persons with Disabilities (CRPD), *General comment No. 4 (2016), Article 24: Right to inclusive education*, 2 September 2016, para. 40 (c) CRPD/C/GC/4, available at: <http://www.refworld.org/docid/57c977e34.html>. Accessed 29 July 2018

³⁷ D. Stone, *Policy paradox: The art of political decision making (Revised edition)*, New York, W.W. Norton & Company, Inc., 2001, p.266.

In a society where not all citizens benefit from government programmes and opportunities, there is a group or class of people that are marginalised when it comes to the enjoyment of human rights, especially economic, social and cultural rights. In order to balance the equilibrium for citizens' participation and enjoyment of some human rights, government can and should, as one of the options, introduce affirmative action policies such as deliberate incentives to encourage and promote the enjoyment of human rights by marginalised or minority groups in society such as children with disabilities as regarding their right to education and access to quality education system. Affirmative action is one of the concepts which even the United Nations Committee on the rights of Persons with Disabilities implores States parties to consider introducing as a measure in an effort to promote the right to inclusive education for children with disabilities.³⁸ Thus;

Per the Committee, according to article 24, paragraph 5, States parties should ensure that persons with disabilities are able to access general tertiary education, vocational training, adult education and lifelong learning without discrimination and on an equal basis with others. Attitudinal, physical, linguistic, communication, financial, legal and other barriers to education at these levels must be identified and removed in order to ensure equal access. Reasonable accommodation must be provided to ensure that persons with disabilities do not face discrimination. States parties should consider taking affirmative action measures in tertiary education in favour of learners with disabilities.

The idea of inducements is premised on the basis that a promised reward or threatened punishment motivates people's actions than they might choose in the absence of either of the flip side of the idea³⁹.

Therefore, affirmative action as a concept that entails inducements will be discussed in this discourse in as far as it seeks to give a reward or promise a reward for people to think differently to the benefit of the realisation for the right to education for children with disabilities. However, the adoption of affirmative action measures does not constitute a violation of the right

³⁸ UN Committee on the Rights of Persons with Disabilities (CRPD), *General comment No. 4 (2016), Article 24: Right to inclusive education*, 2 September 2016, CRPD/C/GC/4, available at: <http://www.refworld.org/docid/57c977e34.html>. Accessed on 29 July 2018

³⁹ Supra, 26

to non-discrimination with regard to education, so long as such measures do not lead to the maintenance of unequal or separate standards for different groups.⁴⁰

1.4 Chapter Synthesis

This research shall comprise of five chapters.

Chapter I

This chapter gives the introduction to the research topic in general. Key concepts used in the research have also been defined and explained. These include Reasonable Accommodation, principle of Progressive Realisation, Inclusive Education and Affirmative action. The significance and purpose of the study, and the research questions have been explained in this chapter as well.

Chapter II

This chapter explains the research methodology and the research design of the study to be used by the author. It explains the survey method to be used for data collection and provides guidelines on the interview structure for the field work. The chapter also provides a template of the interviews questions conducted by the researcher.

Chapter III

This Chapter focuses on the central body of the research topic. It explains in detail the application of the principles and concepts of the study in relation to existing legal and policy framework relevant to the topic of study. Both international and regional human rights treaties are analysed and explained in light of the topic and their application to right to education, including jurisprudence on the right to education. National legislation relating to the right to education has also been referred to and analysed through a descriptive approach of analysis.

Additionally, this chapter discussed the report of the United Nations Special Rapporteur on the Rights to Persons with Disabilities in Zambia with a thematic focus on the right to education. The National Policy on Disability, Zambia Agency for Persons with Disabilities Strategic Plan,

⁴⁰ UN Committee on the Rights of Persons with Disabilities (CRPD), *General comment No. 4 (2016), Article 24: Right to inclusive education*, 2 September 2016, para. 40, CRPD/C/GC/4, available at: <http://www.refworld.org/docid/57c977e34.html>. Accessed 29 July 2018

2017-2021 and the National Education Policy have also been discussed in this chapter. The chapter ends with a summary overview thereof.

Chapter IV

The chapter anchors on the findings of the study.

Chapter V

This chapter will look at the conclusions of the study, emerging issues and make possible recommendations arising from the findings and discussions of the research topic.

2. Chapter II: Research Design

This chapter discusses the research type and methodology and the research design of the study to be used by the author. It explains the survey method to be used for data collection and provides guidelines on the interview structure for the field work. The chapter also provides a template of the interviews questions conducted by the researcher.

2.1 Descriptive research

A descriptive approach will be the research type to be applied to this study. According to Kothari, Descriptive research is one of the research types which includes surveys and fact-finding enquiries of different kinds. The major purpose of descriptive research is description of the state of affairs as it exists at present. In social science and business research, the term often used is Ex post facto research. The main characteristic of this method is that the researcher has no control over the variable; she or he can only report what has happened or what is happening. The methods of research utilised in descriptive research are survey methods of all kinds, including comparative and correlational methods. For this study, the method of survey will involve the comparative one, in relation to what is obtaining on the ground and what is promised or declared in various instruments relating to the right to education for children with disabilities.⁴¹

⁴¹ C.R. Kothari, *Research Methodology: Methods and Techniques (Second Revised edition)*, New Delhi, New Age International (P) limited Publishers, 2004, p. 2-3

2.2 Personal interviews as survey method

Primary data was collected through field research using personal interviews as a survey method.⁴² The questions⁴³ for data collection were structured and framed in light of the right to education for children with disabilities vis-à-vis the duty to provide reasonable accommodation in schools through the principle of progressive realisation, affirmative action and the definition of inclusive education as underpinned by the United Nations Committee on the rights of persons with disabilities which will be used as a yard stick, using guidelines for successful interviewing. According to Kothari (*Research Methodology: Methods and Techniques*),⁴⁴ the following points (in addition to other aspects dependent on case by case basis) should be taken into account by the interviewer for eliciting the desired information:

- (i) Interviewer must plan in advance and should fully know the problem under consideration. He/she must choose a suitable time and place so that the interviewee may be at ease during the interview period. For this purpose some knowledge of the daily routine of the interviewee is essential.
- (ii) Interviewer's approach must be friendly and informal. Initially friendly greetings in accordance with the cultural pattern of the interviewee should be exchanged and then the purpose of the interview should be explained.
- (iii) All possible effort should be made to establish proper rapport with the interviewee; people are motivated to communicate when the atmosphere is favourable.
- (iv) Interviewer must know that the ability to listen with understanding, respect and curiosity is gateway to communication, and hence must act accordingly during the interview. For all this, the interviewer must be intelligent and must be a man/woman with self-restraint and self-discipline.
- (v) To the extent possible there should be free-flowing interview and the questions must be well phrased in order to have full cooperation of the interviewee. But the

⁴² C.R. Kothari, *Research Methodology: Methods and Techniques (Second Revised edition)*, New Delhi, New Age International (P) limited Publishers, 2004, p. 112, 120 and 121. There are various methods of data collection and selection of appropriate methods is dependent on various factors which include; (i) Nature, scope and objectivity of the enquiry (ii) Availability of funds (iii) Time factor, and (iv) Precision required.

⁴³ See appendix 1, with the template of guiding questions used during the collection of data.

⁴⁴ C.R. Kothari, *Research Methodology: Methods and Techniques (Second Revised edition)*, New Delhi, New Age International (P) limited Publishers, , 2004, p.19

interviewer must control the course of the interview in accordance with the objective of the study.

- (vi) In case of big enquiries, where the task of collecting information is to be accomplished by several interviews, there should be an interview guide to be observed by all so as to ensure reasonable uniformity in respect of all salient points in the study

The interviews were conducted both by meetings in person with 26 individuals⁴⁵ which included 8 pupils with disabilities (with their consent, guidance and in the presence of their respective teachers throughout the interviews sessions), teachers, civil society and government officials, and by telephonic discussion with 6 individuals from a broad spectrum of background as well, were logistics could not allow for in-person interviews, with officials from 10 government institutions and 11 private schools/ non-governmental dealing with disability rights, including children with disabilities, all from different institutions and places across 4 provinces of Zambia, namely North-Western, Western, Copperbelt and Lusaka in selected districts which included Solwezi, Mufumbwe, Lusaka, Kitwe, Senanga, Lukulu, Mongu and Chilanga.

The information gathered will be used to answer the research questions by analysing the legal framework versus the data collected under which the education system operates. Therefore, a descriptive approach⁴⁶ will be given to legal and policy instruments that are of academic importance to the topic. At international level, various instruments and documents relate to Zambia, that is, the UNCRPD, CRC, ICESCR, the UN Educational, Scientific and Cultural Organisation, among other documents dealing with rights of children with disabilities. At national level, laws and policy documents such as the Persons with Disabilities Act No. 6 of 2012, the Education Act No. 23 of 2011, Strategic Plan for Zambia Agency for Persons with Disabilities (ZAPD)⁴⁷, National Disability Policy, National Policy on Education.⁴⁸ Further,

⁴⁵ Author has in possession some audio recordings of the interviews and notes available for verification purposes.

⁴⁶ According to Kothari, a descriptive research includes surveys and fact-finding enquiries of different kinds. The major purpose of descriptive research is the description of the state of affairs as it exists at present. The main characteristic of this method is that the researcher has no control over the variables; he/she can only report what has happened or what is happening.

⁴⁷ ZAPD is a statutory quasi government institution body corporate by creation of law, established under the Persons with Disabilities Act no. 6 of 2012 with the overall mandate to promote, protect and enhance rights of persons with disabilities. It also administers services to persons with disabilities and regulates the creation and operation of Disabled Peoples' Organisations (DPOs) among many functions aimed at promoting the rights of persons with disabilities in Zambia.

institutional documents such as the Strategic Plan for Zambia Agency for Persons with Disabilities (will also be of relevant reference. In addition, available academic⁴⁹ literature on the general topic of the thesis and expert reports like the special rapporteur on her visit to Zambia (2016) and the State of Human Rights in Zambia (2015)⁵⁰ will be of great analytical value.

The concept of reasonable accommodation and progressive realisation were guiding pillars to focus on the nature of field/expert interviews as obtaining on the ground in Zambia. This was done in context and light of principles of access to education for children with disabilities as espoused by the United Nations Committee on the Rights of Persons with Disabilities General Comment No. 4, thus, Accessibility, Availability, Acceptability and Adaptability.⁵¹

For jurisprudence context and understanding, General Comment No. 4 of the Committee on the UNCPRD⁵² regarding inclusive education will also be incorporated in the discussion as providing international benchmarks on government effort and duty to provide education to persons with disabilities as such interpretative comments form part of soft law and insights on best practices. Further, the concluding observations by the Committee on the Rights of the Child in Zambia will be taken into account when discussing the measures government should put in place in order to fulfil the right to education for all children without discrimination.⁵³

⁴⁸ Republic of Zambia, Ministry of Education, Educating our future: National Policy on Education (1996)

⁴⁹ Ibid footnote 14. p5

⁵⁰ This is the 2015 Annual State of Human Rights Report (ASHRR) produced pursuant to the Human Rights Commission (Zambia)'s mandate of monitoring the country's human rights performance. The report provides monitoring findings on civil liberties, women's rights and some aspects of economic, social and cultural rights. The report also provides an assessment of individuals' human rights knowledge undertaken through a household respondent public survey and a survey of experts. The project (of the production of report) is funded by the Government of Sweden through the United Nations Development Programme (UNDP).

⁵¹ According to the United Nations Committee on the Rights of Persons with Disabilities' General Comment No. 4 on the right to inclusive education, inclusive education can be understood as a "principle that values the well-being of all students, respects their inherent dignity and autonomy, and acknowledges individual's requirements and their ability to effectively be included in and contribute to society". Furthermore it is also "The result of a process of continuing and proactive commitment to eliminating barriers impeding the right to education, together with changes to culture, policy and practice of regular schools to accommodate and effectively include all students." In order to be fulfilled, "the education system must comprise four interrelated features: availability, accessibility, acceptability and adaptability."

⁵² Ibid footnote 19. p7

⁵³ UN Committee on the Rights of the Child (2104th Meeting held from 22.01.2016 to 29.01.2016-CRC/C/ZMB/2-4, Considerations of report submitted by States parties under article 44 of the Convention- CRC/C/SR.2104) Concluding Observations on the Combined Second and fourth periodic reports of Zambia, CRC/C/SR.2104), p.6

2.3 Field work

The field work which included the survey method of data collection through personal interviews and travelling to different parts of the country took about 3 months, from the 2nd half of April to second half of July, 2018.

Out of the four provinces (Lusaka, Western, North-Western, and Copperbelt) targeted for the field work, a minimum of two (2) schools in each province would be reached for interviews. This comprise of the three (3) types of schools, thus, government school, private school and community school. This is so in order to identify what similarities and challenges exist in each respective stream of schooling and examples on how each school is addressing the challenges they face. Further, the rationale is to identify what are the contributing factors and assess if they can be adopted to generalise and fairly stand applicable to the other schools of the same nature, thus, Government, private or community, as the case may be, and have a balanced disposition since similar school have similar systems such as curriculum.

3. Chapter III: Legal and Policy framework regarding right to education for children with disabilities in Zambia

This Chapter focuses on the central body of the research topic. It explains in detail the application of the principles and concepts of the study in relation to existing legal and policy framework relevant to the topic of study and an analysis of the education system in Zambia. Both international and regional human rights treaties are analysed and explained in light of the topic and their application to right to education, including jurisprudence on the right to education.

3.1 The right to education

The right to education for children with disabilities is recognised, promoted and protected in both national legislation⁵⁴ and core international human rights instruments that Zambia has ratified. These include the Universal Declaration of Human Rights, 1948, United Nations Convention on the Rights of Persons with Disabilities, 2006⁵⁵, ratified in 2012,⁵⁶ the United Nations Convention

⁵⁴ Section 15 of the Education Act No. 23 of 2011 of the Laws of Zambia provides that “A child has the right to free basic education.” Additionally, Section 24 of the Persons with Disabilities Act No. 6 of 2012 of the Laws of Zambia provides that “A parent, guardian or custodian of a child with a disability of school-going age, shall enroll the child in a school”.

⁵⁵ Article 24 of the United Nations Convention on the Rights of Persons with Disabilities 2006/2008, states that “States Parties recognize the right of persons with disabilities to education. With a view to realizing this right

on the Rights of the Child, 1989⁵⁷, ratified in 1990,⁵⁸ the International Covenant on Economic, Social and Cultural Rights, 1966⁵⁹ ratified in 1984⁶⁰ and the African Charter on the Rights and Welfare of the Child, 1990⁶¹ signed in 1992.⁶² And the African Charter on Human and Peoples' Rights (*The Banjul Charter*), 1981, ratified in 1984.⁶³

Based on a survey of international and regional instruments, the following are the core obligations of States regarding the right to education:⁶⁴

- (i) Provision of primary/basic education that is free and compulsory;
- (ii) Progressive introduction of free secondary, higher and fundamental education;
- (iii) Access to public educational institutions and programmes on a non-discriminatory basis;
- (iv) Educational quality that conforms to the internationally recognised objectives;
- (v) Guarantee of parental choice in the education of their children without interference from the State or third parties, subject to conformity with “minimum educational standards”.

without discrimination and on the basis of equal opportunity, States parties shall ensure an inclusive education system at all levels and lifelong learning.”

⁵⁶ Preamble to the Persons with Disabilities Act, No. 6 of 2012 of the Laws of Zambia.

⁵⁷ Article 28 of the United Nations Convention on the Rights of the Child 1989, provides that “States Parties recognize the right of the child to education, and with a view to achieving this right progressively and on the basis of equal opportunity, they shall, in particular: (a) make primary education compulsory and available free to all;”

⁵⁸ https://www.google.at/search?source=hp&ei=4JbW4TjOMXRwALlrKH4Bw&q=when+did+zambia+ratify+the+crc&oq=when+did+zambia+ratify+the+&gs_l=psy-ab.3.0.0i22i30k1.3524.12645.0.20660.28.26.0.0.0.597.4873.2-4j6j0j3.13.0....0...1.1.64.psy-ab..15.12.4550.0..0j0i3k1j33i22i29i30k1.0.Fk53gNj8byM. Accessed 27 July 2018.

⁵⁹ Article 13 (1) of the International Covenant on Economic, Social and Cultural Rights 1966 provides that (quoting the relevant parts only) “The States Parties to the present Covenant recognize the right of everyone to education.....” Further, article 13 (2) (a) states that “Primary education shall be compulsory and available free to all.”

⁶⁰ <http://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.170.4465&rep=rep1&type=pdf#page=1&zoom=auto,-107,52>. Accessed 27 July 2018.

⁶¹ Article 11 (1) of the African Charter on the Rights and Welfare of the Child 1990, provides that “every child shall have the right to education”. Further, sub article 3 (a) of article 11 of the Charter states that “ States Parties to the present Charter shall take all appropriate measures with a view to achieving the full realisation of the this right and shall in particular: (a) provide free and compulsory basic education;”

⁶² https://www.google.at/search?ei=EoNbW7eWHYLXwQLVwKuACA&q=when+did+zambia+ratify+the+african+charter&oq=when+did+zambia+ratify+the+african&gs_l=psy-ab.1.0.33i22i29i30k1i2.162759.172126.0.175432.10.10.0.0.0.487.1726.3-4j1.5.0....0...1.1.64.psy-ab..5.5.1724...0i22i30k1j35i39k1.0.Z7oEzU2Znks. Accessed 27 July 2018.

⁶³ <http://www.achpr.org/instruments/achpr/ratification/>. Accessed 27 July 2018.

⁶⁴ M. Nowak, K.M. Januszewski, Hofstatter, *All Human Rights for All, Vienna Manual on Human Rights*, Vienna intersentia, 2012, p.328 and 329

3.2 The Education system in Zambia relating to the duty to provide reasonable accommodation in schools and inclusive education

The education system in Zambia is anchored on the principles of liberalisation, decentralisation, equality, equity, partnership and accountability as provided for in the 1996 Educating Our Future-National Policy on Education.⁶⁵

The Educating our Future: National Policy on Education 1996 was developed as a result of the Salamanca World Conference on Special Needs Education, Education is a right, adapt the environment and practice. In this policy document, the Zambian government recognises the basic right of every Zambian to good quality education. Hence, emphasis in this National Policy has been placed on key factors such as access, equity and quality maintenance at all delivery points in the education system. The Educating Our Future-National Policy on Education, 1996 is Zambia's third major educational policy document. The first was the *Educational Reforms* 1977, the second was the *Focus on Learning* in 1992. Educational Reforms emphasised education as an instrument for personal and national development, whereas, Focus Learning stressed the need for mobilisation of resources for the development of school education. Meanwhile, Educating Our Future-National Policy on Education, 1996, seeks to address the entire field of formal institutional education, paying particular attention to the democratisation, decentralisation and productivity on the one hand, and curriculum relevance and diversification, efficient and cost-effective management, capacity building, cost-sharing and revitalised partnerships on the other.⁶⁶

The system consists of both the formal and non-formal, vocational training,⁶⁷ with the non-formal system catering to street children, adults and the geographically displaced children among others.⁶⁸ Besides the regular classroom based teaching approaches provided for in formal schools, alternative modes such interactive radio based education administered by the Education Broadcasting Services are equally recognised by the ministry of education as modes of learning for children who are unable to attend school. The interactive radio schooling is therefore one way that some children with disabilities access education.

⁶⁵ Republic of Zambia, Ministry of Education, *Educating our future: National Policy on Education* (1996), p.4

⁶⁶ Republic of Zambia, Ministry of Education: *Educating Our Future-National Policy on Education*, 1996, p.10. Available on http://www.moge.gov.zm/?page_id=1013. Accessed 30 July 2018.

⁶⁷ Section 22 (2) (j) of the Persons with Disabilities Act, No. 6 of 2012, requires the Minister responsible for education to ensure that; “pre-vocational and vocational training for persons with intellectual disabilities in Vocational and Skills training institutions.”

⁶⁸ Ministry of General Education, *2015 Educational Statistical Bulletin* (May 2016) 13, Directorate of Planning and Information

Zambia is a State party to core international human rights instruments that guarantee universal access to education. Notably, the country has signed and ratified the ICESCR, the UNCRC and the UNCRPD among others. Zambia is also signatory to the UN Educational, Scientific and Cultural Organisation (UNESCO) Education for All Framework of Action (EFA) which has in some way influenced the country's curriculum framework. The National Policy on Education: Educating our Future Policy of 1996 is the country's third policy reform on education since independence in 1964.

The first education reform was in 1966 under the framework of the enactment of the Education Act, 1966 in an effort to replace the colonial education system with African value systems. This was preceded by the second reform in 1977 until the development of the 1996 Educating Our Future-National Policy on Education 1996.

The current policy contains a section on children with special learning needs and provides for their inclusion in mainstream schools and the provision of 'necessary facilities'.⁶⁹ By implication, the term 'necessary facilities' can be said to include reasonable accommodation measures and not only restricted to physical infrastructure.

In 2011, the country repealed the Education Act, 1966 and enacted the Education Act, 2011⁷⁰ which preceded the ratification of the CRPD. It is, worth noting that both the Educating Our Future- National Policy on Education 1996, and 2011 Education Act are under review while a new Early Childhood Education (ECE) policy is being formulated.⁷¹ The review process and formulation of the ECE Policy started in 2015.⁷² To actualise the education legal framework, a curriculum framework was formulated in 2013. This was meant to standardise and set legally binding guidelines by which all levels of learning institutions must abide.⁷³

Section 13 of the Education Act, 2011, provides for free basic education while section 23 (4) mandates learning institutions to 'adopt a policy of positive and affirmative action in relation to learners with special education needs'.⁷⁴ Based on this provision, reasonable accommodation

⁶⁹ *Educating Our Future-National Policy on Education*, 1996

⁷⁰ Act 23 of 2011, Education Act, Assented 15 April 2011

⁷¹ 2015 Statistical Bulletin (n 4 above) 13

⁷² *ibid*

⁷³ Curriculum Development Centre, *Education Curriculum Framework* (2013) 1

⁷⁴ Education Act, section 23 (4).

duties could be implemented by taking a broader approach that extends to affirmative action to include the duty to provide reasonable accommodation in schools.

Positive (affirmative) action requirements are further meant to provide a legal mandate for the service providers to take necessary measures to overcome the disadvantage associated with accessing a service and are anticipatory.⁷⁵ In the context of the Zambian system whereby disability is hardly allocated resources besides the few who receive bursaries, a positive action duty will prompt the allocation of resources for reasonable adjustments to be made readily available and through progressive realisation where funds may be limited. Moreover, section 22 (2) (i) of the Persons with Disabilities Act also makes a requirement for a defined education allowance be allocated to offset the ‘extra costs’ incurred in due process.⁷⁶

However, this measure of affirmative action can only be realised or demanded for where beneficiaries are well informed about it, especially that reasonable accommodation duties are offered on request to meet individual needs.⁷⁷ Whether or not the allowance for the affirmative action can be paid, remains a matter of prioritisation of financial resource allocation by the powers and authorities that be. What is even more challenging is that most parents of children with disabilities are not aware that access to education and the duty to be provided with reasonable accommodation is a legal right for their children.⁷⁸ It is noteworthy that the Persons with Disabilities Act’s explicit mention of the requirement to provide reasonable accommodation was largely influenced by the ratification of the UNCRPD which led to the repeal of the Persons with Disabilities Act, 1996.⁷⁹

In theory, the Zambian education legal framework can thus be said to contain some positive pronouncements towards the provision of supports that would enable children with disabilities to participate effectively.

⁷⁵ C. O’ Cinneide, ‘A New Generation of Equality Legislation? Positive Duties and Disability Rights’ in Anna. Lawson and Caroline Gooding (eds), *Disability Rights in Europe From Theory to Practice* (Essays in European law, Hart Pub 2005) 219–220.

⁷⁶ Section 22 (2) (i) of The Persons with Disabilities Act states; “that an allowance is to be paid to learners with disabilities to cover the extra cost that may be incurred for such learning...”

⁷⁷ S. Quinlivan, ‘Reasonable Accommodation in Education’ (2015) 4 the Irish Community Development Law Journal 16, p.8.

⁷⁸ S. T. Tesemma, ‘Educating Children with Disabilities: Zambia’ (2011) ACPF, p.25.

⁷⁹ The preamble to the Persons with Disabilities Act No. 6 of 2012 provides for the ratification and repeal of the Persons with Disabilities Act, 1996.

In addition to the above provisions, the National Policy on Education: Educating our future, 1996, provides that ‘where access, participation and achievement in education are impeded by gender, physical, mental, economic, or social factors, the government will seek to eliminate sources of educational disadvantage in order to enhance equity’.⁸⁰

However, it is noteworthy that although the Persons with Disabilities Act mandates the ministry of education to prescribe guidelines and take necessary measures to ensure the provision of reasonable accommodation in the education system, the Education Act on the other hand gives the mandate to the respective school management boards in collaboration with external partners to provide the required support to enable children with disabilities access to education.⁸¹

3.3 The Duty to Provide Reasonable Accommodation in schools in Zambia

Pursuant to article 24 of the UNCRPD, States Parties have an obligation to provide reasonable accommodation and inclusive education as opposed to special or integrated education systems,⁸² yet as noted by De Beco the UNCRPD does not give a definition of inclusive education. However, its prohibition of segregated institutions on account of impairment and failure to provide necessary supports is indicative of what it is not.⁸³ Based on this interpretation, what is currently prevailing in the Zambian education system both in practice and in theory cannot, therefore, be said to qualify as inclusive education within the working definition of inclusive education as espoused by the UN Committee on the Rights of Persons with Disabilities in its General Comment No.4.⁸⁴ For instance, section 23 (5) of the Education Act, 2011 states that ‘a learner with special education needs shall, to the greatest extent possible, be integrated into

⁸⁰ National Policy on Education (n 3 above) 4.

⁸¹ Education Act 23, (a)

⁸² Article 24 (2), (a), (b) and (c) United Nations Convention on the Rights of Persons with Disabilities, 2006.

⁸³ Gauthier de Beco, ‘The Right to Inclusive Education According to Article 24 of the UN Convention on the Rights of Persons with Disabilities: Background, Requirements and (Remaining) Questions’ (2014) 32 Netherlands Quarterly of Human Rights 263, p.275.

⁸⁴ According to the United Nations Committee on the Rights of Persons with Disabilities’ General Comment No. 4 on the right to inclusive education, inclusive education can be understood as a “principle that values the well-being of all students, respects their inherent dignity and autonomy, and acknowledges individual’s requirements and their ability to effectively be included in and contribute to society”. Furthermore it is also “The result of a process of continuing and proactive commitment to eliminating barriers impeding the right to education, together with changes to culture, policy and practice of regular schools to accommodate and effectively include all students.” In order to be fulfilled, “the education system must comprise four interrelated features: availability, accessibility, acceptability and adaptability.”

mainstream educational institutions.⁸⁵

The Persons with Disabilities Act, 2012 on the other hand true to this approach as the UNCPRD by prohibiting situations that might amount to segregation while at the same time makes provisions for special education for those whom due to their impairments cannot attend inclusive education.⁸⁶ The Education Policy provides for integration and special education respectively. The Educating Our Future-National Policy on Education, 1996 defines children with special educational needs as ‘exceptional’ and would be integrated in mainstream schools to the greatest extent possible as well as provide for special schools for children with severe impairments as the need may be.⁸⁷

Despite the fact that both the Disability Act and Education Act were enacted post-UNCPRD ratification, their provisions maintain integrated and special education systems. Nevertheless, what is clear in both Acts as well as in the Education Policy is the need for supports in ensuring children with disabilities’ access to education. It should be noted here that other academics have argued against the term ‘supports’ as perpetuating the existing barriers in the education system by focusing on the need for the child to adapt to the norm.⁸⁸

Arguably, since the UNCPRD allows for states to consider the principle of progressive realisation in situations of limited resources. De Beco thus argues that the right to inclusive education can equally be achieved progressively over time by taking necessary measures which would eventually achieve the desired goal.⁸⁹ Similarly, by enacting legislation which recognises the need to provide reasonable accommodations in overcoming the structural barriers for learners with disabilities integrated in mainstream schools, Zambia can equally be said to be transitioning towards inclusive education. However, it is yet to be seen how far the duty to provide reasonable accommodation would continue to be implemented in Zambia in light of other competing factors such as the provision of food and health care, and other barriers as will be highlighted in the

⁸⁵ Education Act, section 23 (5)

⁸⁶ The Persons with Disabilities Act No.6, 2012, section 22 (a) and (b), 23 (2)

⁸⁷ Republic of Zambia, Ministry of Education, *Educating our future: National Policy on Education* (1996)., p. 66–67.

⁸⁸ See Bronagh Byrne, ‘Hidden Contradictions and Conditionality: Conceptualisations of Inclusive Education in International Human Rights Law’ (2013) 28 *Disability & Society* 232, 241.

⁸⁹ Gauthier de Beco ‘The Right to Inclusive Education According to Article 24 of the UN Convention on the Rights of Persons with Disabilities: Background, Requirements and (Remaining) Questions’ (2014) 32 *Netherlands Quarterly of Human Rights*, p. 275.

research findings chapter.

The duty to provide reasonable accommodation is among the key provisions of the CRPD which requires immediate as opposed to progressive realisation. This is because of the framing of the concept as a non-discriminatory measure and thus requiring immediate realisation. Article 2 therefore includes denial of reasonable accommodation among the categories which would amount to discrimination for persons with disabilities.⁹⁰

Therefore, although the right to education falls under the ambit of economic, social and cultural rights and thereby requires progressive realisation, the UNCRPD clearly breaks this dichotomy by its framing of reasonable accommodation as a civil and political right.⁹¹ Similarly, article 24 (2) calls for states parties to ensure that “reasonable accommodation of the individual’s requirements is provided”⁹² and further reaffirms the need to have the relevant support provided for persons with disabilities within the general education system for the purpose of facilitating their effective learning.

Given this provision, the duty to provide reasonable accommodation therefore goes beyond mere access by providing the opportunity to enroll children in school but rather calls for the removal of barriers tailored to the individual’s need in accessing the said right. Kayes and French are therefore right in noting the potential impact reasonable accommodation duties can have in achieving substantive equality measures and further contribute towards the transforming of fundamental structural norms.⁹³ To this end, Zambia recognises the importance of regarding each child as an individual being and thus provides;

‘the child is at the centre of the overall education system which exists entirely for the benefit of the learner and further recognises that each child is unique, with his or her own individuality and personality, fashioned in family and community

⁹⁰ CRPD art 2, “Discrimination on the basis of disability” means any distinction, exclusion or restriction on the basis of disability which has the purpose or effect of impairing or nullifying the recognition, enjoyment or exercise, on an equal basis with others, of all human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field. It includes all forms of discrimination, including denial of reasonable accommodation”

⁹¹ A. Lawson, *Disability and Equality Law in Britain the Role of Reasonable Adjustment*, Hart Pub, 2008. p.32.

⁹² *ibid*, art 24 (2) a

⁹³ R. Kayess, P. French, ‘*Out of Darkness into Light - Introducing the Convention on the Rights of Persons with Disabilities*’ (2008) 8 Hum Rts L Rev 1, 9.

*backgrounds that are themselves unique. This contributes a rich diversity to the entire educational enterprise which should seek to cultivate the qualities and potentialities of each learner, without trying to mould all children according to the same pattern.*⁹⁴

This recognition although not explicitly referring to children with disabilities in particular is important in that it resonates with the UNCRPD principle 3 (a) that promotes ‘individual autonomy and independence of persons’;⁹⁵ as well as article 3 (d) on ‘respect for difference and acceptance of persons with disabilities as part of human diversity and humanity.’⁹⁶ Given this background, it is therefore possible that in the long run, reasonable accommodation duties would be provided based on the principle of progressive realisation in respect of the individual needs as relates to the barriers faced impeding access to inclusive quality education for children with disabilities.

Due to a number of factors such as poverty, lack of sufficient public school infrastructure, and teachers, children with disabilities in the rural areas and more so those from less privileged households are more likely to attend community schools⁹⁷ while others attend specialised special schools/units or integrated in the mainstream. Community schools first appeared in 1982 arising from a need for additional school places and relevant education for out-of-school children and youth. The needs of orphans, the poor and girl children formed a key reason for the creation of these schools. They were intended to be free to children between nine and sixteen years. Community schools still play a complimentary role alongside public and private education system.⁹⁸

The situation is especially compounded by the fact that most children with disabilities attend community schools which are characterised by limited state funding and usually poorly resourced compared to public schools.

⁹⁴ Republic of Zambia, Ministry of Education, *Educating our future: National Policy on Education* (1996)., p. 28.

⁹⁵ CRPD, art 3 (a)

⁹⁶ *ibid*, d

⁹⁷ USAID, Meeting EFA: *Zambia Community Schools* (Case study, 2006), p.3 <http://www.equip123.net/docs/e2-ZambiaCaseStudy.pdf>

⁹⁸ B. Carmody, *The Evolution of Education in Zambia*, Ndola, Mission Press, Zambia, 2016, p.64.

This is compounded by the fact that 83.3 percent of basic schools in Zambia are located in rural areas.⁹⁹ The 2015 national review of the Education for All (EFA) thus noted that the goal of education is not only about increasing enrolments but number of children should correspond with the learning environment by providing adequate support. The report further noted the more than 5 kilometers excess distances between schools in rural areas as a challenge for children's educational access.¹⁰⁰ The long distances can be a barrier to children with limited mobility in light of the CRPD requirement to ensure the availability of education within the community.

3.4 Inclusive education in the Zambian education system

According to the United Nations Committee on the Rights of Persons with Disabilities' General Comment No. 4 on the right to inclusive education, inclusive education can be understood as a;

“Principle that values the well-being of all students, respects their inherent dignity and autonomy, and acknowledges individual's requirements and their ability to effectively be included in and contribute to society”. Furthermore it is also “The result of a process of continuing and proactive commitment to eliminating barriers impeding the right to education, together with changes to culture, policy and practice of regular schools to accommodate and effectively include all students.” In order to be fulfilled, “the education system must comprise four interrelated features: availability, accessibility, acceptability and adaptability.”

Inclusive Education according to Zambia Federation of Disability Organization¹⁰¹ is the continuous process of increasing access, participation and achievement for all children in mainstream schools. It demands improving schools for all persons. Inclusive education refers to the concept that the education system serves all children with a commitment of leaving no child behind. According to Leonard Cheshire Disability¹⁰² all factors of exclusion must be addressed by responding to the diverse needs of all learners through inclusive practices in learning, cultures and communities and reducing exclusion within and from education.

In addition, Inclusive education covers marginalized children who include; children between the ages of three and six, street children, working children, children from ethnic, religious and

⁹⁹ Figures based on the 2011-2012 academic year as recorded in the National Plan.

¹⁰⁰ Ministry of Education, Science, Vocational Training and Early Education, 'Education for All 2015 National Review' (June 2015), p.34.

¹⁰¹ Zambia Federation of Disability Organization, 2011

¹⁰² Leonard Cheshire Disability, 2017

linguistic minorities, nomadic and displaced children and those living in informal settings, children with disabilities and some girls.¹⁰³

Inclusive Education is not Special Education nor is it integration. Unfortunately, the Zambian context and interpretation of Inclusive Education is integration. Integration labels children as having problems which require “fixing” by experts before they can be mainstreamed. Inclusion views mainstream education systems as having barriers to learning that require to be challenged. Inclusive Education is wider than Special education, in fact special education is a subset of Inclusive Education.¹⁰⁴

Despite the misinterpretation of the concept of inclusive education in practice, there are clear provisions in some national pieces of legislation in addition to international and regional policy frameworks which Zambia is subscribed to. Accordingly, The Persons with Disabilities Act No. 6 of 2012 provides for access of an inclusive, quality and free primary, secondary, and higher education on an equal basis with others in the communities in which they live.¹⁰⁵ The National Disability Policy of 2015 as well emphasizes Inclusive Education Systems at all levels. Further, the Seventh National Development Plan (SNDP) 2017 with a theme “No one left behind”, makes provision on the need to provide equity and Inclusive education enhancement, Centers of Excellence establishment, Inclusive Vocational Training promotion and upgrading teacher competencies.

3.5 International human rights instruments

The right to education¹⁰⁶ for children with disabilities has a strong foundation as the disposition below will demonstrate, in both international and regional human rights instruments and it is therefore enshrined in various international human rights instruments. The notable ones being article 24 of the United Nations Convention on the Rights of Persons with Disabilities, articles 13 and 14 of the International Covenant on Economic, Social and Cultural Rights, articles 28 and

¹⁰³M. N. Mwamba, Ministry of Education HQs, *LEAVING NO ONE BEHIND: A GOVERNMENT POLICY DIRECTION ON THE STATUS OF INCLUSIVE EDUCATION IN ZAMBIA*. A presentation to the Inclusive Education symposium held at *Raddisson blu* hotel on 30 November 2017.

¹⁰⁴ Ibid

¹⁰⁵ Section 2 (b) of the Persons with Disabilities Act No. 6 of 2012

¹⁰⁶ For the benefit of the reader, the expression “right to education” shall be in its literal and broader sense to include the right to education even for children with disabilities.

29 of the Convention on the Rights of the Child, and article 10 of the Convention on the Elimination of All Forms of Discrimination against Women.

*“Worldwide about 67 million children of primary school age do not attend school, almost 800 million people, of whom two-thirds are women, still lack basic literacy skills. However, education being an empowerment right is one of the most essential vehicles to the full and effective exercise of many, if not all, other rights....”*¹⁰⁷

This therefore, calls for all States parties, Zambia inclusive to put measures in place to ensure the right to education is enjoyed by all persons including children with disabilities.

These various international human rights instruments are complimentary to each other and amongst themselves in as far as providing the recognition and obligation for the right to education by States parties and will be discussed below in detail in their respective application to Zambia but not necessarily in order of relevance as all play an important legal jurisprudence in the provision, interpretation and implementation of the right to inclusive education in Zambia. As such, order of relevance would be a matter of relativity, on a case by case basis but not definite.

3.5.1 The United Nations Convention on the Rights of Persons with Disabilities (UNCRPD), 2006 and its implementation in Zambia

This Convention places obligations on States parties in right of the right to education for children with disabilities in relation to the duty to provide reasonable accommodation. Accordingly;¹⁰⁸

States parties should respect, protect and fulfill each of the essential features of the right to inclusive education: availability, accessibility, acceptability, adaptability. The obligation to respect requires avoiding measures that hinder the enjoyment of the right, such as legislation excluding certain children with disabilities from education, or denial of accessibility or reasonable accommodation. The obligation to protect requires taking measures that prevent third parties from interfering with the enjoyment of the right, for example, parents refusing to send girls with disabilities to school, or private institutions refusing to enroll persons with

¹⁰⁷ M. Nowak, K. M. Januszewski, Hofstatter, *All Human Rights for All, Vienna Manual on Human Rights*, Vienna, intersentia, 2012, p.328

¹⁰⁸ UN Committee on the Rights of Persons with Disabilities (CRPD), *General comment No. 4 (2016), Article 24: Right to inclusive education*, 2 September 2016, para. 38, CRPD/C/GC/4, available at: <http://www.refworld.org/docid/57c977e34.html>. Accessed 29 July 2018

disabilities based on their impairment. The obligation to fulfill requires taking measures that enable and assist persons with disabilities to enjoy the right to education, for example, that education institutions are accessible and that education systems are adapted appropriately with resources and services.

The United Nations Convention on the Rights of persons with Disabilities is probably one of the most progressive international human rights instrument, as it calls for enjoyment of all human rights and fundamental freedoms by children and adults with disabilities, and points to the importance of early intervention as well as inclusion in the education system from an early age,¹⁰⁹ with specific focus aimed at promoting and protecting the rights of persons with disabilities, in recent history. This emphasis on the promotion and protection of the rights for persons with disabilities is reflected in the purpose of the convention¹¹⁰ and further provides the definition of the range of persons with disability.¹¹¹ The preamble to the convention states inter alia that “*recognising that children with disabilities should have full enjoyment of all human rights and fundamental freedoms on an equal basis with other children, and recalling obligations to that end undertaken by States Parties to the Convention on the Rights of the Child*”.

Article 3 of the Convention espouses principles upon which the Convention shall be interpreted and enforced. Among the principles are; respect for human dignity, individual autonomy including the freedom to make one’s own choices, and independence of persons, non-discrimination, accessibility, equality of opportunity and respect for the evolving capacities of children with disabilities and respect for the right of children with disabilities to preserve their identities, among principles.

¹⁰⁹ According to United Nations Educational and Cultural Organisation (UNESCO), Policy Brief on Early Childhood: *Inclusion of Children with Disabilities: The Early Childhood Imperative* N° 46 / April – June 2009, p.1; *A remarkable step toward recognizing people with disabilities as equal and active members of society has been made through the UN Convention on the Rights of Persons with Disabilities (CRPD), which came into force in May 2008. The CRPD calls for enjoyment of all human rights and fundamental freedoms by children and adults with disabilities, and points to the importance of early intervention as well as inclusion in the education system from an early age.*

¹¹⁰ Article 1 states that the purpose of the present Convention is to promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities, and to promote respect for their inherent dignity.

¹¹¹ Article 1 states that persons with disabilities include those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others.

Therefore, when implementing the provisions of this Convention, States Parties are called upon to observe and uphold these principles in all programmes and development activities that seek to promote and protect the rights of persons with disabilities, right to education for children with disabilities included. It follows that, all educational planning and services such as schools and access thereto by children with disabilities must be in tandem with the spirit of these principles for the effective enjoyment of the right to education by children with disabilities in the State concerned, in this case Zambia which is a State party to the convention following its ratification of the Convention in 2012 through the enactment of the Persons with Disabilities Act, No. 6 of 2012 of the laws of Zambia¹¹², except the Optional Protocol to the Convention, as earlier highlighted herein.

Article 24 of the United Nations Convention on the Rights of Persons with Disabilities, 2006, guarantees the right to an inclusive education at all levels, including tertiary education and lifelong learning, and that no child shall be excluded from the general education system based on disability.

In this regard, the *World Network of Users and Survivors of Psychiatry*¹¹³ have identified some actions that need to be done and strategies to put in place in order to promote and protect the right to education for persons with disabilities. Thus:

- i. Ensure that teachers are able to meet the diverse learning needs of students, and provide a safe and respectful academic and social environment.
- ii. Provide support and reasonable accommodation to students with psychosocial or learning disabilities. Identify and meet needs without imposing labels on children.
- iii. Ensure that no child is excluded from education because of psychosocial disability, or coerced to use mental health services or psychiatric drugs as a condition for receiving an education.
- iv. Provide opportunities and reasonable accommodation for adults with psychosocial disabilities to complete their education and participate in lifelong learning.

¹¹² The preamble to the Persons with Disabilities Act, No. 6 of 2012 of the laws of Zambia provides that the Act shall domesticate the United Nations Convention on the Rights of Persons with Disabilities, 2006.

¹¹³ World Network of Users and Survivors of Psychiatry; *Implementation manual for the United Nations Convention on the Rights of Persons with Disabilities*, February, 2008, p. 23

Therefore, in practical terms, it means that schools in Zambia must be designed in a manner that guarantees accessibility by children with disabilities both in the sense of infrastructure and learning facilities or aids, with qualified teachers, hence providing reasonable accommodation in schools for the right to education by children with disabilities, progressively in more parts of the country. Zambia as a State party should ensure that all educational products and services across the country in both public and private schools to the extent possible are designed according to the dictates of *Universal design*.¹¹⁴

Article 4 of the Convention provides for the general obligations of States parties which underpin States corresponding undertaking to promote and protect the rights of persons with disabilities, in this case the need for progressive realisation for the right to education for children with disabilities. States parties have an obligation to ensure and promote the full realisation of all human rights and fundamental freedoms for all persons with disabilities without discrimination on account of any form of disability.

In undertaking to adopt appropriate legislative, administrative and other measures for the implementation of the rights in the convention, including the right to education for children with disabilities, Zambia should put in place practical and concrete measures corresponding to the right to education for children with disabilities. This has since been demonstrated to the extent that, on the aspect of legislation, the country has ratified and domesticated the Convention through the enactment of the Persons with Disabilities Act, No. 6 of 2012 of the Laws of Zambia which seeks to provide for the promotion and protection of the rights of persons with disabilities.¹¹⁵

The second general obligation on States parties is to take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices that constitute

¹¹⁴ According to article 2, of the United Nations Convention on the Rights of Persons with Disabilities, 2006, *Universal Design* means the design of products, environments, programmes and services to be usable by all people, to the largest extent possible, without the need for adaption or specialised design. ‘Universal Design’ shall not exclude assistive devices for particular groups of persons with disabilities where this is needed.

¹¹⁵ The preamble of the Act states inter alia that it is an Act to promote the participation of persons with disabilities with equal opportunities in the civil, political, economic, social and cultural spheres; to provide for mainstreaming of disability issues as an integral part of national policies and strategies of sustainable development, ensure accessibility by persons with disabilities to the physical, social, economic and cultural environment, and to health, education, information, communication and technology; and provide for the domestication of the Convention on the Rights of Persons with Disabilities to which Zambia is party, in order to promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by persons with disabilities and to promote respect for their inherent dignity.

discrimination against persons with disabilities. It follows therefore, that Zambia should identify and abolish any such regulations that constitute discrimination on account of disability. Accordingly, traditional customs and beliefs which portray disability as misfortune and other stereotype misconceptions of disability perpetrated by discriminatory beliefs arising from certain customs and traditions should be abolished and outlawed.

Some customs and traditional beliefs have been a large contributing factor to continued discrimination against children with disabilities especially in rural and peri-urban areas of Zambia and hence the need for government to engage relevant authorities such as traditional leaders¹¹⁶ in an effort to abolish such norms and customs.¹¹⁷

Furthermore, the States parties have an obligation not to engage in any act or practice that is inconsistent with the provisions of the convention and ensure that public authorities and institutions act in accordance to the provisions of the convention. States parties also have an obligation to eliminate all forms of discrimination on the basis on disability by any person, organisation and private corporation.

Additionally, States parties have a general obligation to promote research and development of universally designed goods and, services, equipment and facilities which should only require minimum adaptation and least cost in order to meet the necessary specific needs of a person with disability and promote their availability and use and further to promote universal design in the development of standards and guidelines.

Therefore, in developing policies or guidelines for education and schools for example, the government of Zambia and its implementing ministries and agencies should factor in the provision of reasonable accommodation in order to realise and promote the right to education for children with disabilities.

In order to promote into perspective the idea of a *human rights lens* to the right to education for children with disabilities, States parties have a general obligation to promote training of

¹¹⁶ Traditional leaders such as Chiefs and Village head men/women and community leaders/elders are the custodians of culture, norms and traditions of their respective chiefdoms and have the influence on the practice and direction of certain beliefs and customs hence making them strategic partners and player in abolishing discriminatory customs and practices.

¹¹⁷ The traditional beliefs and customs that constitute discrimination will be elaborated in detail under the Chapter on research findings.

professionals and staff working with persons with disabilities in the rights recognised in the convention such as the right to education so that the provision of services and assistance guaranteed by those rights are enhanced. Professionals and staff working for government agencies or organisations including the private sector dealing with the right to education and disability rights in general should therefore, have a fair understanding of the rights of persons with disabilities as espoused in the convention in order to provide services and products with a *human rights lens* in perspective.

In line with the concept of progressive realisation for the right to education, which falls in the economic, social and cultural rights also known as *second generation rights*,¹¹⁸ States parties should undertake to put measures to the maximum of its available resources and where necessary within the framework of international corporation with a view to progressively achieving these rights, in particular the right to education by children with disabilities as regards expenditure and public spending on the provision of reasonable accommodation in schools in Zambia.

Article 24 of the United Nations Convention on the Rights of Persons with Disabilities specifically provides for the right to education and places on States parties to recognise the right of persons with disabilities to education with a view to realising this right without discrimination and on the basis of equal opportunity, accordingly States shall ensure an inclusive education system at all levels and lifelong learning which is directed toward the full development of human potential and sense of dignity and self-worth and the strengthening of respect for human rights and fundamental freedoms.

In implementing the realisation of the right to education for persons (children) with disabilities, States parties have an obligation to ensure that persons with disabilities are not excluded from the general system on the basis of disability, whilst placing emphasis on children with disabilities' access to free and compulsory primary education without discrimination.

Article 24 (2) (b), (c) (d), respectively, provides that States shall ensure that:

Persons with disabilities can access an inclusive, quality and free primary education and secondary education on an equal basis with others in the communities in which they live;

Reasonable accommodation of the individual's requirements is provided;

¹¹⁸ M. Freeman, *Human Rights: An interdisciplinary approach*, (2nd ed.), Cambridge, UK, Polity Press, 2011, p.179

Persons with disabilities receive the support, within the general education system, to facilitate their effective education.

All States parties further, have the duty to facilitate the learning of sign language and the promotion of the linguistic identity of the deaf community.¹¹⁹ Zambia, as a State party to the convention is supposed to ensure that the education of persons with disabilities in particular children, who are blind, deaf or deaf blind, is delivered in languages and modes and means of communication that are most appropriate for individual within an environment that seeks to maximise academic and social development of the child, hence the need for the provision of reasonable accommodation.¹²⁰

Therefore, in order to implement this right, Zambia as a State party to the convention, is expected to undertake appropriate measures such as the employment of teachers, including teachers with disabilities who are qualified in sign language and/or braille and undertake to train professionals and staff who work at different levels of education.

The content of such strategic training shall take into account awareness about disability and the use of appropriate augmentative and alternative modes, means and formats of communication, educational techniques and materials to support children with disabilities access quality education. In view of this, Zambia has the obligation to provide reasonable accommodation in schools for children with disabilities for the right to education.¹²¹

The duty to provide reasonable accommodation by the Zambian government, should be undertaken in the context and light of the principles of access to education for children with disabilities as espoused by the United Nations Committee on the Rights of Persons with Disabilities, as complimented by other treaty bodies concerning the right to education for children with disabilities. Thus General Comment No. 4, gives the principles as follows; Accessibility, Availability, Acceptability and Adaptability.¹²²

¹¹⁹ Article 24 (3) (b) of the United Nations Convention on the Rights of Persons with Disabilities, 2006.

¹²⁰ Article 24 (3) (c) of the United Nations Convention on the Rights of Persons with Disabilities, 2006.

¹²¹ Article 24 (4) and (5) of the United Nations Convention on the Rights of Persons with Disabilities, 2006.

¹²² According to the United Nations Committee on the Rights of Persons with Disabilities' General Comment No. 4 on the right to inclusive education, inclusive education can be understood as a "principle that values the well-being of all students, respects their inherent dignity and autonomy, and acknowledges individual's requirements and their ability to effectively be included in and contribute to society". Furthermore it is also "The result of a process of continuing and proactive commitment to eliminating barriers impeding the right to education, together with changes

It remains to be seen how far the government of Zambia will go in implementation of the provisions of the Convention in as far as right to inclusive education is concerned in line with the principles of inclusive education and the duty to provide reasonable accommodation in schools for children with disabilities; and whether there will be political will to ratify the Optional Protocol to the UNCRPD by Zambia in order to provide alternative effective remedy through Individual Complaints Procedure in instances of violations against children with disabilities' right to education.

3.5.2 The International Covenant on Economic, Social and Cultural Rights, 1966

This is yet another important piece of international human rights law wherefrom the obligation to fulfil the right to education by States parties emanates. Zambia is also a State party to this Covenant has ratified in 1984.

Article of the Covenant 13 states as follows;

“The States Parties to this present Covenant recognise the right of everyone to education. They agree that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms. They further agree that education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups, and further the activities of the United Nations for the maintenance of peace”

The Committee on the International Covenant on Economic, Social and Cultural Rights, in its General Comment No. 13 of (8th December, 1999), has developed the interrelated and essential features for the right to receive education:¹²³

(i) Availability

States are obliged to have a sufficient quantity of functioning educational institutions and programmes available. This can, for example, on the one hand mean that enough

to culture, policy and practice of regular schools to accommodate and effectively include all students.” In order to be fulfilled, “the education system must comprise four interrelated features: availability, accessibility, acceptability and adaptability.”

¹²³ B. FERENCH, “Right to Education”, M. Nowak, K. M. Januszewski, Hofstatter, *All Human Rights for All, Vienna Manual on Human Rights*, Vienna, intersentia, 2012, p.329

primary schools have to be available to meet the number of school-aged children each year. On the other hand, these facilities have to be functional, the meaning of which depends on numerous factors, including the developmental and cultural contexts but can include the availability of teaching materials, training of teachers and so forth.

(ii) Accessibility

Educational institutions and programmes must be accessible to everyone on the basis of equality and non-discrimination, which encompasses physical (that is, within safe physical reach) and economic accessibility. The latter means that whereas primary education is to be free to all from the start, secondary and higher education have to be made progressively free by the States.

(iii) Acceptability

The first Special Rapporteur on the Right to Education, Katarina Tomasevski, stated in one of her reports that education had to be acceptable both to parents and children. This applies to both, form and substance of education, for example, children have the right to be educated in conformity with their religious or other beliefs, and parents may establish, maintain, manage and control private educational establishments, subject to meeting the standards set by the State.

(iv) Adaptability

Finally, States are obliged to ensure that education remains flexible so it can adapt to the needs of changing societies and communities and respond to the needs of students within their diverse social cultural settings.

The General Comment No. 13 further addresses the three levels of obligations of States of the right to education as protected in the Covenant. Thus;

(i) Obligation to Respect

States are obliged to refrain from all measures that interfere, hinder, or prevent the full enjoyment of the right to education. Examples of such a violation of the right to education are the closure of private schools that comply with minimum educational

standards, or obliging students to study material that is incompatible with students' religious beliefs.

(ii) Obligation to Protect

States have an obligation to take measures through legislation or by other means to prevent and prohibit the violation of the right to education by third parties-be it individuals or groups. This can, for example, mean, that the State has to ensure that third parties, such as parents, village leaders, employers among others, do not prevent girls, women and members of marginalised groups including children with disabilities from having access to education.

(iii) Obligation to Fulfil

Finally, States are obliged to ensure through positive measures the full realisation of the right to education. This includes the obligation to facilitate, such as to ensure that education is culturally appropriate for minorities and indigenous peoples, and to provide and ensure the availability of education by actively developing a system of schools, including building classrooms, providing a sufficient number of teachers, teaching materials and so forth and so on.

These obligations provide the basis upon which States parties undertake to put in place measures including appropriation of corresponding financial resources toward the provision of reasonable accommodation for progressive realisation of the right to education for children with disabilities.

However, despite having the Covenant and the General Comment thereof in place, a developing nation such as Zambia is not expected to immediately ensure the same level of Economic Social and Cultural rights benefits that a rich nation can afford. Nevertheless, even the poorest State Party is required by the ICESCR to ensure that its people receive the highest level of Covenant rights that the country's resources can permit through the concept of progressive realisation.

This in practice entails that all State Parties have an obligation to use all appropriate means at the legislative, administrative and judicial level to ensure full realisation of Economic, Social and Cultural rights. Local and international co-operation and assistance should also be explored and made available.

According to Article 111, of the Zambian Constitution Chapter 1 of the laws of Zambia, however, “The Directive Principles of State Policy set out in this Part shall not be justiciable and shall not thereby, by themselves the economic, social and cultural rights, despite being referred to as rights in certain instances, be legally enforceable in any court, tribunal or administrative institution or entity.” This clearly means Zambian citizens cannot go to a court of law and sue the government on the grounds that their right to education, for example, has been denied.

As the Constitution currently stands, (see sub-chapter 4.1 under the *National Legal framework* for more information on the legal implication of the rights contained in the Covenant) therefore, the State is expected to consider these rights in formulating and implementing its policies relating to development, law reform and application of law “only in so far as State resources are able to sustain their application, or if the general welfare of the public so unavoidably demands, as may be determined by Cabinet.

3.5.3 The United Nations Convention on the Rights of the Child, 1989

This Convention is yet another important international human rights treaty that seeks to enhance the right to education for all children. The convention stresses the importance of taking into account the best interest of the child in all matters that concern the child, including access to quality education.¹²⁴

States parties are also under an obligation to provide and ensure the right to education for children within their jurisdictions without discrimination of any kind, including disability.¹²⁵

Article 28 states;

States parties recognise the right to education, and with a view to achieving this right progressively and on the basis of equal opportunity, they shall, in particular:

- (a) Make primary education compulsory and available free to all;*
- (b) Encourage the development of different forms of secondary education, including general and vocational education, make them available and accessible to every child, and take appropriate measures such as the introduction of free education and offering financial assistance in case of need;*

¹²⁴ Article 3 of the United Nations Convention on the Rights of the Child, 1989.

¹²⁵ Article 2 of the United Nations Convention on the Rights of the Child, 1989.

- (e) *Take measures to encourage regular attendance at schools and reduction of drop-out rates.*

Under its mandate as a treaty monitoring body, the United Nations Committee on the Rights of a Child, in respect to Zambia's report on the compliance and implementation of the Convention through the Universal Periodic Review, in its concluding observations, the Committee made the following observation,¹²⁶ *inter alia*;

23. *The Committee welcomes that the new Constitution (Amendment) Act defines a child as any person who has not attained the age of 18. However, the Committee is concerned that despite this and although the Marriage Act establishes the legal age of marriage as 21 years of age, there is still a persistent practice of child marriage in the State party. CRC/C/ZMB/CO/2-4*

24. *The Committee recommends that the State party:*

(a) *Take all necessary measures to expedite the adoption of the Bill of Rights and the Children's Code Bill in order to implement the definition of the child as any person who has not attained the age of 18 in accordance with the new Constitution and article 1 and other related principles and provisions of the Convention and to implement in practice the minimum age of marriage at 18 years;*

(b) *Adopt and implement the seven bills drafted under the criminal and correctional laws and repeal and replace the Juveniles Act with the Child Justice Administration Act;*

(c) *Provide adequate human, technical and financial resources for the review and audit process of child related legislation.*

C. General principles (arts. 2, 3, 6 and 12)

Non-discrimination

25. *The Committee notes with appreciation that some progressive provisions on non-discrimination in relation to children have been included in the new Constitution. However, the*

¹²⁶ UN Committee on the Rights of the Child (2104th Meeting held from 22.01.2016 to 29.01.2016-CRC/C/ZMB/2-4, Considerations of report submitted by States parties under article 44 of the Convention- CRC/C/SR.2104) *Concluding Observations on the Combined Second and fourth periodic reports of Zambia*, CRC/C/SR.2104), para. 23, 24, 25, 26, 27, 28, 29 & 30.

Committee is concerned that the principle of non-discrimination, particularly in relation to access to health, education services, discriminatory social and cultural practices, customary marriage disputes and inheritance, is not adequately implemented with respect to children belonging to the most vulnerable groups, such as girls, children with disabilities, children belonging to religious minorities, children living with HIV/AIDS, migrant and refugee children, orphans and children born out of wedlock.

26. The Committee recommends that the State party ensure equal access to education, basic health care and other welfare services for all children. It also recommends that the State party intensify its efforts to eliminate discrimination against the most vulnerable groups of children, such as girls, children with disabilities, children belonging to religious minorities, children living with HIV/AIDS, migrant and refugee children, orphans and children born out of wedlock. It also recommends that the State party continue prioritizing the support for vulnerable children and youth in the next National Development Plan.

Best interests of the child

27. The Committee notes that the Children's Code Bill and the National Child Policy include reference to the best interests' principle. It is, however, concerned that the principle is not considered under customary law and by religious leaders in many areas of children's rights, particularly in rural areas in cases of inheritance, education and land allocation.

28. In the light of its general comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration, the Committee recommends that the State party strengthen its efforts to ensure that this right is appropriately integrated and consistently applied in all legislative, administrative and judicial proceedings and decisions as well as in all policies, programmes and projects that are relevant to and have an impact on children. In this regard, the State party is encouraged to develop procedures and criteria to provide guidance to all relevant persons in authority as well as traditional and religious leaders for determining the best interests of the child in every area and for giving it due weight as a primary consideration.

CRC/C/ZMB/CO/2-4

Respect for the views of the child

29. *The Committee is concerned that the views of the child are not solicited or taken into account in various settings concerning children, including in judicial and administrative procedures, at schools and at home, particularly on issues such as child marriage and sexual and reproductive health. It also notes that the Youth Parliament has not yet been established.*

30. *In the light of its general comment No. 12 (2009) on the right of the child to be heard, the Committee recommends that the State party take measures to strengthen this right. To that effect, it recommends that the State party:*

(a) Conduct programmes and awareness-raising activities to promote the meaningful and empowered participation of all children within the family, community and schools, as well as in institutions and in judicial and administrative proceedings;

The Committee has provided important insight on the programmes and activities which government should put in place for the realisation of the right to inclusive education. Civil society and other stakeholders may also take advantage and press upon government to implement the strategies and recommendations as advanced by the treaty monitoring body.

3.5.4 The African Commission on Human and People's Rights, 1981

At regional level, Zambia is a State party to a number of human rights instruments and policy framework documents that seek to promote the right to education for children with disabilities. The African Charter on Human and People's Rights, 1981, is one such regional human rights instrument.

Article 17 of the Charter, states that;

"Every individual shall have the right to education"

The implementation and enforcement of the Charter is the responsibility primarily of the African Commission on Human and People's Rights which is a treaty monitoring body which was inaugurated on 2nd November, 1987¹²⁷.

¹²⁷https://www.google.at/search?ei=31pdW96SMrdgAaptqagBw&q=when+was+the+african+commission+on+human+and+peoples%27+rights+established&oq=when+was+the+african+commission+on+human+and+peoples%27+rights+established&gs_l=psy-ab.3...34311848.34340765.0.34342537.123.71.0.0.0.610.9418.3-12j7j4.23.0..2..0...1.1.64.psy-ab..100.18.7619.0..0j0i22i30k1j33i160k1j33i22i29i30k1.0.zDZ6oV91xC4. Accessed 29 July 2018

Article 30 of the African Commission on Human and People's Rights, 1981 states that; An African Commission on Human and People's Rights, hereinafter called the Commission shall be established within the Organisation of African Unity to promote human and people's rights and ensure their protection in Africa.

So far the Commission has received communication about alleged violations of the rights enshrined in the Charter and has since made appropriate recommendation to governments on the application and compliance of the Charter by member States.

Thus, in the case of the African Commission on Human and People's Rights, *Free Legal Assistance Group and Others v. Zaire*,¹²⁸ Commission found that the Government of Zaire (Now Democratic Republic of Congo) violated among other rights, the right to education as provided for in the Charter.

The brief summary of the case was that, a claim alleging the government of Zaire's grave and massive violation of human rights under the African Charter on Human and Peoples' Rights; violation of the right to enjoy the best state of physical and mental health; violation of the right to education was communicated/ brought to the Communication.¹²⁹

The claims brought by four NGOs against former Zaire (now Democratic Republic of the Congo) alleging a gross mismanagement of public finances by the government leading to degrading conditions, shortages of medicine, education and basic services. The government allegedly failed to provide these services impairing its people from obtaining adequate medical treatment and from accessing basic education. Furthermore, the claimants accused the government of torture, arbitrary arrests and arbitrary detentions, extra-judicial executions, unfair trials, severe restrictions placed on the right to association and peaceful assembly, as well as suppression of the freedom of the press. The government of Zaire failed to respond to these allegations, in spite of the numerous opportunities given to it by the African Commission on Human and Peoples' Rights. After consideration of the relevant provisions of the African Charter

¹²⁸The African Commission on Human and People's Rights, *Free Legal Assistance Group and Others v. Zaire*, Communication Nos. 25/89, 47/90, 56/91, 100/93 (1995). Available at; www.yucom.org.yu/EnglishVersion/LawyersCommittee.asp
<http://www.iuhr.org/sommaire.php3?sq=accueilen> Les Témoins de Jehovah/Zaire <http://temoins-jehovah.forumactif.com/>.

¹²⁹ *ibid*

on Human and Peoples' Rights, the Commission ruled that the failure of the government to provide basic services such as safe drinking water and electricity and the shortage of medicine constitutes a violation of the right to enjoy the best state of physical and mental health (Article 16). The commission also found that the closure of universities and secondary schools violated the right to education (Article 17) under the African Charter. Besides violations of economic and social rights, the Commission found the government of Zaire guilty of violating the right to life (Article 4), the prohibition of torture and inhuman or degrading treatment, the right to liberty and security of person (Article 6), the right to have ones cause heard (Article 7) and the right to freedom of conscience, religion and belief (Article 8).¹³⁰

Zaire (today Democratic Republic of the Congo) has been in a state of war ever since. Despite various peace accords and even though democratic recognized elections took place in 2006, the country has been struck by strife and civil war. On 23 January 2008 a peace deal ending the Kivu conflict was signed. While this formally ended all conflicts in DRC, the effectiveness of the deal and therefore the implementation of the decision remains doubtful.¹³¹

3.5.5 The African Charter on the Rights and Welfare of the Child, 1990

This Charter is yet another regional human rights instrument which makes provision for the promotion and protection for the right to education. Under this Charter States parties have an obligation to ensure that appropriate measures aimed at the full realisation of the right to education is attainable by all children without discrimination by providing free and compulsory basic education.¹³²

Parents and legal guardians to children are at liberty to enroll their children in established private schools that are in line with religious standing of their respective families and also in accordance

¹³⁰ Ibid

¹³¹ The African Commission on Human and People's Rights, *Free Legal Assistance Group and Others v. Zaire*, Communication Nos. 25/89, 47/90, 56/91, 100/93 (1995). Available at; www.yucom.org.yu <http://www.yucom.org.yu/EnglishVersion/LawyersCommittee.asp>
<http://www.iuhr.org/sommaire.php3?sq=accueilen> Les Témoins de Jehovah/Zaire <http://temoins-jehovah.forumactif.com/>.

¹³² Articles 1, 2 and 3 of the African Charter on the Rights and Welfare of the Child, 1990

with the capacities of the children, provided such schools meet minimum standards set by governments of the concerned countries.¹³³

The provision to allow children to be enrolled in private or community established schools compliments government efforts in the realisation of the right to education for children with disabilities to the extent that not all government schools have been provided with reasonable accommodation for children with disabilities in order for them to access quality education on an equal basis with others.

3.6 National legal framework on the right to education

Perhaps the most effective and easier to implement when it concerns human rights are the existing national or domestic pieces of legislation that provide for the right to education for children with disabilities in the respective jurisdictions concerned, owing to a number of considerations such as available of avenues for redress and easy access thereto in instances of violations, for example administrative local authorities and agencies of government entrusted with the responsibility to promote and protect the right to education for children with disabilities. The avenues for remedy could be Courts of law, Administrative tribunals or indeed non-judicial bodies.¹³⁴

These institution and agencies are created or established by specific laws and regulations and/or policy documents of national legal systems. This disposition hold true for Zambia, for international remedy for human rights violation may only be resorted to as a measure of last resort after all reasonable efforts and attempts of seeking redress in domestic or national systems prove futile.¹³⁵ Therefore, a discussion and analysis of the laws and regulations governing the right to education for children with disabilities in Zambia is central to this thesis.

3.6.1 The Constitution of Zambia Chapter 1, 1991, of the Laws of Zambia

The Constitution is the supreme law of the land which binds all state institutions and all other laws must be in conformity with its provisions otherwise any inconsistent laws and regulations shall be declared null and void to the extent of its inconsistency. The Constitution (Amendment)

¹³³ Article 4 of the African Charter on the Rights and Welfare of the Child, 1990

¹³⁴ M. Nowak, *Introduction to Human Rights Theory*, in M. Nowak, K. M., Januszewski, Hofstatter, *All Human Rights for All, Vienna Manual on Human Rights*, Vienna, intersentia, 2012, p.273.

¹³⁵ M. Nowak, 2012, p.270-271.

Act No. 2 of 2016, introduced positive changes such as the inclusion of disability as one of the prohibited grounds of discrimination in article 23, contributing to strengthening the protection system for persons with disabilities. The prohibition of discrimination on the basis of disability in the provision of services (either by private or public entity) and other national affairs.¹³⁶

The Bill of Rights embodied in part III of the Constitution provides for the protection of fundamental human rights and freedoms, but excludes economic, social and cultural rights, such as the right to education or social protection. These rights are placed under part IX of the Constitution, which deals with directive principles of State Policy, including article 112 (f), which requires the State to provide to persons with disabilities social benefits and amenities suitable to their needs, in a just and equitable manner.¹³⁷ These rights may be attained to the extent that State resources permit;¹³⁸ consequently, they are not justiciable and cannot be legally enforced in any court, tribunal or administrative institution,¹³⁹ hence the need for progressive realisation as an avenue to circumvent the legal impediment, for the right to education in the provision of reasonable accommodation in schools.

The preamble to the Constitution provides for the respect of human rights and fundamental freedoms for all persons.¹⁴⁰

Article 1 (1) of the Constitution (Amendment) Act No. 2 of 2016, of Zambia guarantees the supremacy of the Constitution, it provides that;

¹³⁶ Article 8 and 23 of the Constitution (Amendment) Act No. 2 of 2016, states inter-alia that the National Values, Principles and Economic Policies, shall be; (d) *human dignity, equity, social justice, equality and nondiscrimination*;

¹³⁷ Article 112 (f) of the Constitution Cap 1 of the Laws of Zambia; *the State shall endeavour to provide to persons with disabilities, the aged and other disadvantaged persons such social benefits and amenities as are suitable to their needs and are just and equitable*;

¹³⁸ According to the Republic of Zambia, Central Statistical Office, *Zambia: 2015 Living Conditions Monitoring Survey: Key Findings*, p. 9. Available from www.zamstats.gov.zm/report/Lcms/LCMS%202015%20Summary%20Report.pdf. ;*Zambia is classified as a lower-middle-income country in the medium human development category, ranked 139 out of 188 countries and territories in the Human Development Index in 2014.1 In 2005, Zambia qualified for debt relief under the International Monetary Fund/World Bank Heavily Indebted Poor Countries Initiative, which released it from 80 per cent of its annual debt-service commitments.2 This development reflected macroeconomic stability and sound fiscal policies, which resulted in good growth in the following decade despite the adverse international economic climate. Nonetheless, economic growth in Zambia has not translated into significant poverty reduction. According to the 2015 Living Conditions Monitoring Survey, 54.4 per cent of the population lives below the poverty line and 40.8 per cent live in extreme poverty. In rural areas, the poverty rate is three times that in urban areas (76.6 per cent compared with 23.4 per cent).*

¹³⁹ Ibid, 111, *The Directive Principles of State Policy set out in this Part shall not be justiciable and shall not thereby, by themselves, despite being referred to as rights in certain instances, be legally enforceable in any court, tribunal or administrative institution or entity.*

¹⁴⁰ Preamble to the Constitution (Amendment) Act No. 2 of 2016, of the Laws of Zambia.

“This Constitution is the supreme law of the Republic of Zambia and any other written law, customary law and customary practice that is inconsistent with its provisions is void to the extent of the inconsistency.”

Whereas, article 1 (3) of the Constitution provides that;

“This Constitution shall bind all persons in Zambia, State organs and State institutions.”

Therefore, all laws, regulations, policies, customs and traditional beliefs that perpetrate discrimination against children with disabilities regarding their right to education are supposed to be abolished and/or repealed in order to protect the rights for all children without discrimination on account of their disability. Accordingly, all institutions of government charged with the responsibility to promote and protect the right to education for children with disabilities should execute their function in the broader context of the constitutional provisions of the national values, principles and economic policies.

3.6.2 The Persons with Disabilities Act No. 6 of 2012 of the Laws of Zambia

The Persons with Disabilities Act is the principal Act, which provides for the continuation of the Zambia Agency for Persons with Disabilities, a government body established in 2012, by the Persons with Disabilities Act, No. 6 of 2012 of the laws of Zambia, charged with the mandate and functions to promote and protect the rights of persons with disabilities, including the right to education for children with disabilities.

This is the Act that has domesticated the United Nations Convention on the Rights of Persons with Disabilities, 2006.

The preamble of the Act states as follows;

“An Act to continue the existence of the Zambia Agency for Persons with Disabilities and define its functions and powers; to promote the participation of persons with disabilities with equal opportunities in the civil, political, economic, social and cultural spheres; provide for mainstreaming of disability issues as an integral part of national policies and strategies of sustainable development; incorporate a gender perspective in the promotion of the full enjoyment of human rights and fundamental freedoms by persons with disabilities; ensure accessibility by persons with disabilities to the physical, social, economic and cultural

environment, and health, education, information, communication and technology; provide for the regulation and registration of institutions that provide services to persons with disabilities and organisations of, and for, persons with disabilities; continue the existence of the National Trust Fund for persons with Disabilities; provide for the domestication of the Convention on the Rights of Persons with Disabilities and its Optional Protocol and other international instruments on persons with disabilities to which Zambia is party, in order to promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by persons with disabilities and to promote respect for their inherent dignity; repeal and replace the Persons with Disabilities Act, 1996; and provide for matters connected with, or incidental to, the foregoing.”

Section 22 states (among other things) that;

The Minister shall, in collaboration with the Minister responsible for education, ensure that the education system is inclusive at all levels and early life-long learning directed to;

- (a) the full development of human potential and sense of dignity and self-worth, and the strengthening of respect for human rights, fundamental freedoms and human diversity.*
- (b) the development by persons with the disabilities of their personality, talents and creativity, as well as their mental and physical abilities, to their fullest potential;*

As regards the right to education, the Act makes the above explicit provisions on the measures and efforts government and its implementing agencies and line ministries should adopt and put in place in the promotion of this right. It is therefore, incumbent upon the government officials in the ministry of education to plan for inclusion programmes in the provision of education services and generally the construction of new schools and adjustments to the old schools in order to make them accessible to children with disabilities.

The Act places a statutory obligation on the Minister responsible for education to designate public educational places to provide reasonable accommodation to children with disabilities for

them to fully benefit from the public educational institutions.¹⁴¹ Reasonable accommodation may range from, ensuring that classrooms have ramps that make them accessible to children who are wheelchair users, sufficient lighting, and pictorial teaching aids for the deaf pupils, braille paper and trained teachers to accommodate children with disabilities, among many assistive devices that vary from one child to the other, depending on their nature and severity of disability.

Section 25 states that;

“A person responsible for admission into an educational institution or other institution of learning shall not refuse to give admission to a person with disability on account of the disability, unless the person with disability has been assessed by the Agency, in consultation with the Ministry responsible for health, to be a person who requires to be in a special school for children or persons with disabilities.”

This is a provision which parents once sensitised about it, can rely upon in demanding for the right to education of their children with disabilities. Secondly, the impact of this provision is that it would encourage managements of educational institutions and schools alike to work towards making their schools accessible by providing reasonable accommodation in order to be able to enroll children with disabilities to the greatest extent possible.

Therefore, Parents and guardians of children with disabilities are required by law to enroll their children in schools once they attain the school-going age, and failure to do so constitutes an offense on the part of the parent or guardian having custody of the child with disability(s).¹⁴²

3.6.3 The Zambia Agency for Persons with Disabilities: powers of the agency as per the Persons with Disabilities Act no. 6 of 2012

The Agency is established pursuant to section 11 of the Act, as a body corporate with powers to do all such acts and things as a body corporate may, by law, do or perform. It follows therefore, that any lawful acts or things that fall within the jurisdiction of the Agency, such as the promotion and protection of the right to education for children with disabilities, it can so undertake accordingly.

¹⁴¹ Section 23 of the Persons with Disabilities Act, No.6 of 2012 of the Laws of Zambia provides that; *The Minister responsible for education shall, by statutory order, designate public educational institutions to provide the necessary facilities and equipment to enable persons with disabilities to fully benefit from the public educational institutions.*

¹⁴² Section 24 of the Persons with Disabilities Act, No.6 of 2012 of the Laws of Zambia

The functions of the Agency as provided for in section 14 of the Act create part of the basis for the powers of the Agency. In other words, the Agency has the powers or authority or mandate to carry out the functions established in section 14 of the Act. As these functions are created by Statute, the powers or mandate or authority to carry out same are Statutory by nature as they are a creation of an Act of Parliament, national legislation.

The Long title or preamble to the Persons with Disabilities Act No. 6/2012 provides states *inter-alia* that the Act provides for the regulation and registration of institutions that provide services to persons with disabilities and organisations of, and for, persons with disabilities.

Pursuant to Part VI of The Act, section 52 (1) places a mandatory obligation upon any person who operates an institution that provides services to persons with disabilities to register the institution with the Agency. This provision yet again provides the agency with the powers to (compile) register such institutions. The wording in the section for the registration is “....*Shall*” which is mandatory. This yet again provides a forum on which the Agency can engage private providers of education to children with disabilities to ensure that reasonable accommodation is provided for the concerned children under their schools.

Section 52 (2) places an obligation upon intending institutions to comply with the provisions of the Act and conform to any requirements and standards set by the Agency with respect to not only registration/establishment but also the continued operation of the said institution. It follows therefore, that the Agency has the powers to set requirements, standards for institutions and monitor or inspect to ensure compliance of the said requirements and standards for the continued operation of any such registered institution.

In this regard, the Agency has developed the following guidelines regulations following aimed at improving the promotion and protection of rights of persons with disabilities;

(i) Registration of Persons with Disabilities (PwDs)

The overall objective of these guidelines is to have ZAPD maintain a register of persons with disabilities in order to enhance effective and efficient planning, implementation, monitoring and evaluation of programmes. Specifically, the guidelines seek to provide procedures for the registration of persons with disabilities.

(ii) Capacity Building of Disabled Peoples' Organisations (DPOs)

The objective of these guidelines is to improve the DPOs' capacity in good governance and management in order to improve service delivery. To strengthen National, Provincial, District and Community disability networks. Further, to promote the establishment of Community Based Rehabilitation for Independent Living Centers (ILC) for persons with disabilities across the country and also build advocacy and resource mobilization skills of DPOs.

(iii) Registration of Disabled Peoples' Organisations (DPOs)

The objective of these guidelines is to have ZAPD maintain a register of persons with disabilities in order to enhance effective and efficient planning, implementation, monitoring and evaluation of programmes. This will also provide procedures for the registration of persons with disabilities.

(iv) Health support guidelines

The main objective of the health support program is to support vulnerable persons with disabilities in accessing specialized quality health care services.

These guidelines were formulated and presented to the Board of Directors the Zambia Agency for Persons with Disabilities in 2017.¹⁴³

3.6.4 Zambia Agency for Persons with Disabilities as a regulator

Section 52 (5) (a) to (g) of the Act, provides powers for the Agency to set standards, code of conduct of institutions and organisations registered under the Act, regulate the conditions under which persons with disabilities may be admitted to any institution, among other powers.

The powers to regulate provided by the Act, are mandatory by nature going by the wording of the provisions, thus, "*The Agency shall, and not the Agency may....*" It therefore, suffices to state that both by the meaning of the word regulate and the powers conferred upon the Agency in the Act generally and specifically section 14, as read together with sections 52, and 54 and the Long

¹⁴³ This is according to information gathered from ZAPD officials during data collection of the study. Additionally, the author was partly involved in the editing of the guidelines during his internship at ZAPD in the last quarter of 2017 and so this information is within the peculiar knowledge of the author.

Title to the Act,¹⁴⁴ the Agency is in for all intents and purposes of its functions and powers thereof a regulator, for all services to persons with disabilities and access to quality education for children with disabilities is no exception to this.

According to Fabian,¹⁴⁵ some of the programmes the Agency is undertaking include a school sponsorship scheme where children with disabilities are being sponsored for their education expenses from kindergarten up to university level to progressively support access to education for children with disabilities. The information about this scheme is made available throughout the country.

Further, under the framework of international corporation, ZAPD has also partnered with the European Union and other civil society players were 120 schools in Sothorn province in 2017 were piloted and teachers underwent training in special education so as to improve their skills and competencies to teach children with disabilities.

Currently, the European Union in partnership with the Ministry of Community Development, the Ministry of Education and ZAPD, has funded a pilot project for 10 schools in Luapula province called “*Natusamilile bonse capamo project*”, literally translated to mean “*Let us all learn together*”. The objective of the project is “*enhancing access to inclusive education for children with disabilities in rural Zambia.*”¹⁴⁶

3.6.5 Superiority of Act no. 6 of 2012 within the national legal framework

Section 3 of the Act No. 6/2012 states;

“....subject to the Constitution, where there is any inconsistency between the provisions of any other written law impacting on the rights of persons with disabilities as provided in this Act or any other matter specified or prescribed under this Act with respect to persons with disabilities, the provisions of this Act shall prevail to the extent of the inconsistency.”

¹⁴⁴ Preamble to the Persons with Disabilities Act, No.6 of 2012 of the Laws of Zambia (quoting only the relevant sections) “*An Act to continue the existence of the Zambia Agency for Persons with Disabilities and define its functions and powers; to promote the participation of persons with disabilities with equal opportunities in the civil, political, economic, social and cultural spheres.*”

¹⁴⁵ Interview with Fabian Mambwe, Lusaka, 20 June 2018

¹⁴⁶ Ibid, further see appendix 4

The implication and consequence of this provision put simply, is that, the Act is superior and above any other written law except the Republican Constitution only, where matters of rights of persons with disabilities are concerned, for this purpose, the duty to provide reasonable accommodation in schools for the right to education for children with disabilities.

3.6.6 The advisory role of the Zambia Agency for Persons with Disabilities

The Agency has a statutory function (positive responsibility) to provide recommendations and advice to Government or any other state organs and institution on matters impacting on the rights and welfare of persons with disabilities such as the right to education. Therefore, the Agency is supposed to take proactive measures and efforts in identifying areas or issues that require improvement or laws and policies that require reforms for the betterment of educational services for persons with disabilities. This could be realised through research and or enhance/thematic inspections on specific issues or areas of concern to the Agency and in the interest of persons with disabilities. Community engagement could as well be an avenue to appreciate and understand certain issues of policy that may require the Agency to ably undertake its advisory role to Government and or the Minister, as the case may be regarding the duty to provide reasonable accommodation in schools for children with disabilities' right to education.

3.7 Salient features of the Zambia National Policy on Disability, 2015.

In an effort to enhance the rights of persons with disabilities in Zambia, the government of the Republic of Zambia formulated a policy, thus the National Policy on Disability. The overall objective of the policy is for the promotion and protection of the rights of persons with disabilities. By this policy government commits to ensuring that persons with the disabilities have the same rights, opportunities and choices as non-disabled people. By vision 2030, government wants to see equal opportunities for persons with disabilities. The policy will also guide the government in the enactment, modifications and changes in legislation to make life better for persons with disabilities.¹⁴⁷

Access to education or skills training/ vocational training for persons with disabilities is difficult to attain. This is compounded by the reality on the ground that many of the schools and other learning institutions do not meet the needs of persons with disabilities such as reasonable

¹⁴⁷ Republic of Zambia, *National Policy on Disability*, 2015 (Easy to read version). p.7

accommodation. In some places of learning, teachers and teaching aids are not good enough for the realisation of quality inclusive education for persons with disabilities.¹⁴⁸

The policy has also taken into account that disability and poverty are very closely intertwined and as such a disabled person is more likely to live in poverty than a non-disabled person.¹⁴⁹ It follows therefore, that due to high poverty levels among persons with disabilities, their right to education is more or less constrained as they may not be able to meet certain financial implications incidental to accessing this right.

3.7.1 The Guiding Principles of the National Policy on Disability:¹⁵⁰

The implementation of the National Policy on Disability is anchored on the following guiding principles;

(i) Partnership

Partnership is key and a strategic operative principle in the provision of services to persons with disabilities. Government aims to work together with other cooperating partners, voluntary groups, community based organisations, faith based organisations and indeed the private sector toward the improvement of the welfare of persons with disabilities.

The provision of quality education cannot be left to government hence the establishment of private and community schools to compliment government efforts in the realisation for the right to education for children with disabilities. The field research conducted by author revealed that there a number of schools enrolling children with disabilities which are run by faith-based organisations such as the Catholic Church. This is evident on the cardinal need for partnership between the government and other stakeholders.

(ii) Co-ordination

The policy places yet again importance on the need for co-ordination amongst providers or stakeholder in the disability rights issues. This is on the backdrop that disability affects all parts of society and hence the need for multi-sectoral approach to achieving provision of good services to persons with disabilities such as access to education. All parties involved are required to know

¹⁴⁸ Ibid, p.11.

¹⁴⁹ Ibid

¹⁵⁰ Republic of Zambia, National Policy on Disability, 2015. p. 12, 13, and 14

and be fully aware of what each and every one is doing in the promotion and protection of the rights of persons with disabilities. This principles makes for better planning of activities.

(iii) Full and effective participation and inclusion in society

This principle entails that everyone person is involved with the National Policy on Disability and plays a full and active role, including persons with disabilities. This guiding principle is in tandem with the spirit and intent of the UNCRPD which emphasises the need to include the active and effective participation of persons with disabilities on matters that affect them.¹⁵¹

(iv) Accountability and transparency

Organisations that deliver various services to persons with disabilities must be able to clearly explain their activities and the reasons or purpose of such activities. It calls organisations to be honest in their dealings and communication. The benefit of this is that people will have confidence in the system and encourage more persons with disabilities to actively participate.

(v) Respect for the dignity and independence

Service providers such as the ministry of education and in particular schools should uphold respect and the right to make choices for persons with disabilities. This means that parents and legal guardians to children with disabilities have to be accorded the independence in trust, on behalf of the child to make choices on the type or mode of education for their child, provided that at all times, the best interest of the child is taking into account by such a parent or guardian, and in all possible situations the input and wishes of the child¹⁵² must be heard and taken into account when exercising such parental responsibility.

(vi) Equality and non-discrimination

The policy recognises that all people are equal before law and that they should all get the full protection and full benefit of the law. The principle means that services to persons with disabilities must be delivered in a fair way. The services providers such as schools, must take into account the needs and status of different individuals such as their gender, race, and

¹⁵¹ Article 3 (c) of the United Nations Convention on the Rights of Persons with Disabilities, 2006 states that as a principle of the convention, that; “*full and effective participation and inclusion in society*”.

¹⁵² Ibid,(a)

nationality, type of disability, health and age, without disability. This principle is also reflected in international human rights instruments.¹⁵³

(vii) Traditional values

Zambia uses a dual legal system whereby both statutory laws and customary laws form part of the legal system and are therefore sources of law. Traditional values and customs are under the charge of traditional authorities such as Chiefs and village headmen.¹⁵⁴ There are a number of cultural and traditional values that should be embraced, ranging from respect for the elderly, caring for the needy in society and sharing opportunities with those in need. There are however, some traditional practices or beliefs that perpetuate discrimination, such must be abolished.¹⁵⁵

(viii) Accessibility

The policy requires all service providers to take action to make sure that persons with disabilities can use, in the same way that non-disabled people can, the facilities and services that help people move around and communicate in the society they live in. accessibility follows that government agencies and other stakeholders should work toward the provision of reasonable accommodation in schools for the realisation of the right to education, this is so because accessibility is central to proving an enabling environment for children with disabilities to access education. It entails

¹⁵³ Article 3 (e) of the United Nations Convention on the Rights of Persons with Disabilities, 2006. Provides for equality of opportunity.

¹⁵⁴ Section 10 (1) (a) (b), of the Chiefs Act Cap 287 of the Laws of Zambia provides that;

(a) the traditional functions of his office under African customary law in so far as the discharge of such functions is not contrary to the Constitution or any written law and is not repugnant to natural justice or morality;

(b) Such functions as may be conferred or imposed upon him by this Act or by or under any other written law.

¹⁵⁵ Report of the Special Rapporteur on the rights of persons with disabilities on her visit to Zambia, 2016., p.8; *Traditional and cultural beliefs play a significant role in the way impairment is perceived in Zambian society. In fact, it has traditionally been associated with misfortune or punishment in the family, caused by ancestral spirits or witchcraft. Owing to these beliefs, many persons with disabilities are discriminated against and are excluded from their communities and society, as they are considered to be incapable of carrying out daily activities. The Special Rapporteur received multiple allegations of children and adults with disabilities being confined at home by their relatives owing to the belief that they were cursed, and of mothers giving birth to children with disabilities being abandoned or divorced by their husbands owing to misconceptions and stigma attached to impairment. Myths and beliefs about impairments have serious repercussions on the right to life and the physical integrity of persons with disabilities. For instance, the Special Rapporteur spoke with several persons with albinism who reported that they lived in constant fear of being attacked and killed for their body parts, to be used in witchcraft rituals by people who believed them to be ghosts or magical beings. Stigma and discrimination also had an impact on their access to other basic rights, such as health care and adequate housing. She was told about landlords refusing to rent accommodation to persons with albinism because of fear that they would run away overnight to escape attack, leaving their bills unpaid.*

removal of barriers that impede access to education by children with disabilities. This principle is also stated in international human rights instruments such as the UNCPRD.¹⁵⁶

The National Policy on Disability sets out the following activities that should be undertaken;¹⁵⁷

- i. Teachers who in the education fraternity must be sensitised and disability issues. Teachers must have special training on how to communicate, teach and support persons with disabilities.
- ii. To make sure that persons with disabilities can get an education, training and lifelong learning without discrimination and on an equal basis with other non-disabled people.
- iii. All stakeholders, especially government being the major stakeholder and eminent duty bearer for rights of citizens and all persons with disabilities, must provide appropriate things and tools of learning such as Braille, large print and hearing aids. This will help more persons (children) with disabilities to get an education and learn new skills.
- iv. Government and other stakeholders, working together must make sure that buildings and other facilities that are open to the public (like schools) can be used by persons with disabilities. This includes having signs in large print and Braille, and having guides and sign language interpreters.

As regards education and skills training, the activities and strategies which the policy sets out (in (viii)above), must be done in order to make sure that persons with disabilities can get an education and skills training, including lifelong learning.

3.7.2 Reflections on the United Nations Special Rapporteur's Report on the right of persons with disabilities in Zambia: Thematic focus on the right to education

In 2016, the UN Special Rapporteur visited Zambia in order to assess and make necessary recommendations on the enjoyment of rights of persons with disabilities and the State's efforts in fulfilling its obligations under the United Nations Convention on the Rights of Persons with Disabilities, in line with international human rights norms and standards.¹⁵⁸ The visit was at the

¹⁵⁶ Article 3 (f) of the United Nations Convention on the Rights of Persons with Disabilities, 2006.

¹⁵⁷ Republic of Zambia, *National Policy on Disability*, 2015., p.19

¹⁵⁸ Human Rights Council, Thirty-fourth session 27 February-24 March 2017 Agenda item 3 Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development: Report of the Special Rapporteur on the rights of persons with disabilities on her visit to Zambia

invitation by the Government of Zambia following its ratification of the United Nations Convention on the Rights of Persons with Disabilities and subsequent domestication in national legislation.¹⁵⁹

In relation to the broader international and regional human rights treaties legal framework of the promotion and protection of the rights for persons with disabilities, the Special Rapporteur notes that Zambia has made significant progress by ratifying core international human rights instruments aimed at ensuring the enjoyment of rights and fundamental freedoms by persons with disabilities. The international human rights instruments ratified by Zambia include the United Nations Convention on the Rights of Persons with Disabilities, 2006, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women and the three optional protocols to the Convention on the Rights of the Child.¹⁶⁰ This is in line with Zambia's international obligations as a member of the international human rights community, the United Nations.

The progressive human rights instruments¹⁶¹ and policy framework Zambia subscribes and operates under, notwithstanding, there is need for harmonization of several legal and policy documents so as to ensure coordinated response and services to persons with disabilities in Zambia. Some laws are still discriminatory regarding derogatory language used to refer to persons with disabilities contrary to the spirit of the United Nations Convention on the Rights of Persons with Disabilities. One such law is the mental Disorders Act, 1951, which authorizes psychiatric interventions without free or informed consent, and the arrest and detention of individuals with psychosocial and intellectual disabilities on the grounds of their disability or non-criminal behaviour associated with such disabilities, with minimal recourse for appeal and review. The Act refers those persons as “idiots”, lunatics”, or persons “apparently mentally disordered or defective”.

¹⁵⁹ The Preamble to the Persons with Disabilities Act, No. 6 of 2012 provides for the domestication of the Convention.

¹⁶⁰ Report of the Special Rapporteur on the rights of persons with disabilities on her visit to Zambia, 2016., p.4, para.10

¹⁶¹ Such as the United Nations Convention on the Rights of Persons with Disabilities, 2006, the International Covenant on Economic, Social and Cultural Rights, 1966, the United Nations Covenant on the Rights of the Child, 1989, The African Charter on Human and Peoples' Rights, 1981, the African Charter on the Rights and Welfare of the Child, 1990, and indeed the Universal Declaration of Human Rights, 1948.

To this end, The Special Rapporteur urged the Government to repeal or amend all discriminatory legislation or provisions as a matter of priority and to fully harmonize its national policy and legislative framework to reflect the State's commitment to abide by the Convention. Moreover, she urged the authorities to promptly adopt several statutory instruments in the areas of education, health, accessibility and employment to accelerate the implementation of the Persons with Disabilities Act and other disability-related policies.¹⁶²

The implementation of the United Nations Convention on the Rights of Persons with Disabilities has been and continues to be a challenge to Zambia. The standards required for the national implementation and monitoring of the Convention requires States parties to put in place independent monitoring mechanisms for the purpose of monitoring compliance to the provisions of the Convention.¹⁶³

Zambia has not yet designated or set up an independent mechanism, compliant with the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles), to monitor the implementation of the Convention, as required by its article 33 (2). The Special Rapporteur recommends that Zambia could give due consideration to officially designating the Human Rights Commission as the State's independent monitoring mechanism for the Convention.¹⁶⁴

As regards accessibility to the built environment, the Special Rapporteur observed that some buildings were accessible to persons with physical disabilities, including new shops and malls. However, the majority of public and private infrastructure; including roads, schools, hospitals, courts, police stations, public administration offices, hotels and new buildings; is inaccessible, despite the existence of national accessibility standards adopted by the Zambia Bureau of Standards.

¹⁶² Ibid, p.7

¹⁶³ Article 33 (2) of the United Nations Convention on the Rights of Persons with Disabilities, 2006.; *States Parties shall, in accordance with their legal and administrative systems, maintain, strengthen, designate or establish within the State Party, a framework, including one or more independent mechanisms, as appropriate, to promote, protect and monitor implementation of the present Convention. When designating or establishing such a mechanism, States Parties shall take into account the principles relating to the status and functioning of national institutions for the protection and promotion of human rights.*

¹⁶⁴ Report of the United Nations Special Rapporteur on the rights of persons with disabilities on her visit to Zambia, 2016., p.8

The Ministry of Works and Supply and its technical staff in charge of monitoring the construction and maintenance of public buildings should apply these standards and consider making an accessibility needs assessment of existing infrastructure to be refurbished, coupled with a time-bound plan to make it accessible. The establishment by the Zambia Agency for Persons with Disabilities of an inspectorate, mandated to carry out inspections of any premises, services or amenities intended for public use and empowered to issue adjustment orders and fines in case of non-compliance, is a positive development. The Agency should accelerate the recruitment and training of inspectors.¹⁶⁵

Regarding the extent to which reasonable accommodation is provided in schools for children with disabilities in Zambia, to realise the right to education for children with disabilities, there is still yet a lot to be done in terms of putting in place deliberate measures, including affirmative action programmes to enhance access to education by children with disabilities through increased enrollment levels. The rate of persons with disabilities entering school leaves much to be desired due to various practical challenges and barriers that impede access to education, among which is lack of reasonable accommodation in schools. Majority of children with disabilities are excluded from the general education system because of the multiple barriers to accessing education on an equal basis with others, owing to the lack of accessible infrastructure, the unavailability of assistive devices and materials adapted for different types of impairments and the lack of individual learning plans and accommodation in the classrooms.¹⁶⁶

According to data from the Ministry of General Education, some 11,250 learners with “mild” or “moderate” disabilities were enrolled in schools in 2015. However, learners considered to have more “severe” disabilities (e.g., deaf-blind children, children with Down syndrome or cerebral palsy) were not enrolled in either mainstream or special education schools. Very few students with disabilities reach the tertiary level of education (77 were enrolled in colleges in 2015) without benefiting from the required support and accommodation. It is also of concern that the education faculty is the only one currently admitting persons with disabilities, and that there is a limited choice of vocational training and careers for persons with disabilities.¹⁶⁷

¹⁶⁵ Ibid, p.10

¹⁶⁶ Ibid, p.13

¹⁶⁷ Ibid.

The concept of progressive realisation for the right to education for children with disabilities which entails formulation and putting in place deliberate measures and budgetary allocation of national resources to the extent possible in line with government resources for social rights and other amenities, would be one of the better options to explore thereby introducing positive inducements or affirmative actions as it were to encourage and promote access to education by children with disabilities.

In line with this concept, the Special Rapporteur welcomed the efforts made in recent years by the Ministry of General Education and the Ministry of Higher Education to improve access to education for children, youths and adults with disabilities. The efforts included the enactment of the Education Act (2011), the introduction of a mandatory course in special education needs for primary school level at the teacher training colleges of education, the development of a revised curriculum for primary school learners with disabilities, the removal of examination fees (affirmative action) for children with disabilities reaching grades 9 and 12, the availability of bursaries (positive inducements) for trainees with disabilities in vocational training and the pilot inclusive vocational training centres run by the Technical Education, Vocational and Entrepreneurship Training Authority.¹⁶⁸

The government, through its line ministries and responsible agencies, therefore, should formulate and adopt concrete plans aimed at promoting access to education by children with disabilities on the premise of its duty to provide reasonable accommodation in schools based on the concept of progressive realisation as a '*special purposes vehicle*' principle of the implementation of the United Nations Convention on the Rights of Persons with Disabilities regarding the right to education. In view of this, The Special Rapporteur urged the ministries of General Education and Higher Education to adopt a time-bound plan for the progressive implementation of an inclusive quality education system across Zambia and to provide learners with disabilities the support needed to access education on an equal basis with others. The plan should entail adjusting the physical environment to make all national schools and universities accessible, adapting educational materials and learning methodologies, training teachers and providing learners with disabilities with the required support and reasonable accommodation, including sign language interpretation, audio and Braille materials, personal assistance and note taking. She also

¹⁶⁸ Report of the Special Rapporteur on the rights of persons with disabilities on her visit to Zambia, 2016., p.13

recommended converting the existing special education schools in resource centres for children with disabilities and using the Zambian social protection framework to increase access to education for children with disabilities.¹⁶⁹

3.8 Summary Overview of Chapter III

The Chapter has revealed that the duty to provide reasonable accommodation in schools as regards the right to education for children with disabilities is well established and settled in various international and regional human rights treaties, including national legislation. Inclusive education has further been espoused as an important aspect relating to access to quality to education by children with disabilities. However, the question is whether these provisions are being implemented on the ground to the practical benefit of children with disabilities, of which the gap between policy and reality has as well been revealed in this chapter.

In this chapter, the concept of progressive realisation has been explored as one that can be used to promote and protect the right to education by children with disabilities in as far as provision of reasonable accommodation is concerned. Despite the progressive measures and efforts put in place for the promotion of rights of persons with disabilities, the Chapter has to a fair extent demonstrated the existing barriers and challenges that impede access to education by children with disabilities. Corresponding remedial measures to improve access to education by children with disabilities have also been highlighted.

The chapter has further, highlighted some of the important measures that must be put in place as assessed by the Special Rapporteur on the Rights of Persons with Disabilities in Zambia, regarding the right to education. These measures include as a priority, a plan to implement an inclusive education system across the country, through adjustments to the physical environment, adaptation of educational materials and learning methodologies and teacher training, and provide the necessary support and accommodation for all students with disabilities, including those with multiple disabilities. The plan should have clear timelines and benchmarks for implementation and evaluation

As reported in the 2016 Report of the Special Rapporteur on the Rights of Persons with Disabilities,¹⁷⁰ in 2012, Zambia enacted the Persons with Disabilities Act no. 6 of 2012, which

¹⁶⁹ Ibid., p.14

seeks to domesticate the Convention on the rights of Persons with Disabilities. The Act promotes respect for the inherent dignity of persons with disabilities and ensures the equal enjoyment of human rights and fundamental freedoms by persons with disabilities. In the chapter, it has been reviewed that the Persons with Disabilities Act no. 6 of 2012 contains progressive provisions to ensure that persons with disabilities are accorded the necessary and appropriate assistance and reasonable accommodation when it comes to the right to education and indeed to access to quality inclusive education system.

Zambia also formulated in 2015, the National Policy on Disability and the National Implementation Plan on Disability. These policy documents provide an important framework to enhance coordination among State institutions tasked with implementation. Zambia has also benefited from several important social reforms, particularly through the introduction of the National Social Protection Policy in 2014, which considers disability as one of its main pillars, and the expansion of the social cash transfer and other funds for persons with disabilities.¹⁷¹

4. Chapter IV: Research Findings

This chapter analyses the findings of the study basing on the legal and policy framework, institutional frameworks, as well as the field results.

As rightly acknowledged in the Strategic Plan for the Zambia Agency for Persons with Disabilities;

Persons with Disabilities in Zambia are faced with many challenges, the most critical one being their access to different services (such as education) and the non-regulation of entities that are providing some services to them. This is exacerbated by among other things the inadequate mainstreaming of disability in the overall legislative framework; inadequate mainstreaming in Ministerial and other stakeholders policies and operations and the lack of or in some cases

¹⁷⁰Human Rights Council, Thirty-fourth session 27 February-24 March 2017 Agenda item 3 Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development: Report of the Special Rapporteur on the rights of persons with disabilities on her visit to Zambia

¹⁷¹ Zambia Agency for Persons with Disabilities: Strategic Plan-2017-2021: Promoting Inclusive and Sustainable Development., p.11

*insufficient awareness among the different stakeholders of disability issues and the roles they play in supporting persons with disabilities' rights.*¹⁷²

As rightly pointed out by Brendan; from its earliest days, education in Zambia faced severe constraints in terms of finance, especially when it was regarded as an item of social consumption. In the years immediately after independence, education was well financed, as it then had come to be seen as an economic investment. However, as the system quickly expanded and as national revenue became less adequate, funding of the education sector declined.¹⁷³

The study has revealed that the provision of reasonable accommodation in schools for children with disabilities to access quality inclusive education is a challenge in Zambia which faces practical barriers that are multifaceted, as is the case in many other jurisdictions, as implementation of human rights, in principle, especially economic, social and cultural rights has a financial implication on the part of the government and the respective implementing ministries and agencies, among many other factors.

These challenges and barriers that impede the access to quality inclusive education by children with disabilities range from, legal frameworks, policy framework, institutional, financial constraints toward implementation of the policies aimed at improving access to education, traditional myths about disability, poverty levels in most rural parts of the country and so on as will be highlighted under this chapter.

4.1 Legal challenges

This study has revealed that a careful analysis of the law governing the right to education as regards provision of reasonable accommodation in schools, both the international legal architecture and the national legislation present a technical challenge in terms of their implementation in practical terms.

4.1.1 International legal framework

First and foremost, at the international human rights level, all international human rights instruments that are relevant to the right to education require to be domesticated by the Zambian

¹⁷² Zambia Agency for Persons with Disabilities: Strategic Plan-2017-2021: *Promoting Inclusive and Sustainable Development.*, p.4

¹⁷³ B. Carmody, *The Evolution of Education in Zambia*, Ndola, Mission Press, 2016, p. 145.

parliament in order for the instruments to be applied in the Zambian legal system. The international human rights instruments are therefore, not immediately applicable in Zambia upon Zambia being merely a State party by signing until they are ratified and domesticated by an enabling Act of parliament.

This process of domesticating international human rights instruments, such as the United Nations Convention on the Rights of Persons with Disabilities, 2006 and other such treaties, is rather a complex, technical and somewhat largely a political process that requires the political will of the respective State. International relations among States which have an influence on States' conduct on human rights are motivated by diverse interests. Which treaties a country chooses to be a State party to, to some extent has something to do with their interests on the international conduct with other States and the perceptions by other United Nations member States.

Additionally, some countries also choose not to domesticate an entire international human right treaty. For instance, as earlier on indicated, Zambia has not ratified the Optional Protocol to the United Nations Convention on the Rights of Persons with Disabilities, 2006. It follows, therefore, that the Individual Complaint Procedure provided for in the Optional Protocol to the Convention which allows for aggrieved parties to lodge a complaint to the treaty monitoring body in cases of violations of the rights enshrined in the Convention cannot be invoked by children with disabilities in Zambia on their own or indeed through their representatives on their behalf.

It means therefore, that in a case of violation of rights protected in the United Nations Convention such as the right to education, children affected in Zambia by themselves or through their parents or legal guardians may not lodge a complaint to an external body, the treaty monitoring body of the Convention against Zambia. The remedies will have to be sought solely from within the national legal and administrative mechanisms. However, the General Comments from treaty monitoring bodies which form part of soft law and provides persuasive interpretive value of the international human rights instruments, could be a basis upon which States parties that have not yielded up the mechanisms of Individual Complaint Procedures can act toward the spirit of the respective treaty within the frame of the General Comments.

4.1.2 National legal framework

The National legal framework provides for the right to education as well, in addition to the international human rights instruments. In fact, the Persons with Disabilities Act No. 6 of 2012 of the laws of Zambia has domesticated the United Nations Convention on the Rights of Persons with Disabilities, 2006. It has also specifically provided for the right to education and the duty to provide reasonable accommodation and other incentives and strategies that should be provided for the promotion and protection of rights of persons with disabilities regarding access to quality inclusive education. However, the Zambian Constitution Chapter 1 as read with the Constitution (Amendment) Act No. 2 of 2016 states that the right to education just like other economic, social and cultural rights are non-justiciable. The right to education can only be ensured to the extent that financial resources permit. This raises a conflict of laws when it comes to the implementation of the strategies for ensuring that reasonable accommodation is provided, hence a technical legal practical barrier to the right to education for children with disabilities.

The Committee on the Rights of Persons with Disabilities has clearly outlined the need for comprehensive legal and policy reforms and the key elements to be taken into account by States parties in the legal and policy formulation processes to ensure the right to inclusive education by children with disabilities. The following are the key elements stipulated by the Committee;¹⁷⁴

- a) Compliance with international human rights standards.*
- b) A clear definition of inclusion and the specific objectives it seeks to achieve at all educational levels. Inclusion principles and practices must be considered as integral to reform, and not simply an add-on programme.*
- c) A substantive right to inclusive education as a key element of the legislative framework. Provisions, for example, which define certain categories of students as 'uneducable' must be repealed.*
- d) A guarantee for students with and without disabilities to the same right to access inclusive learning opportunities, within the general education system, and for individual learners to the necessary support services at all levels.*

¹⁷⁴ UN Committee on the Rights of Persons with Disabilities (CRPD), *General comment No. 4 (2016), Article 24: Right to inclusive education*, 2 September 2016, para. 61, CRPD/C/GC/4, available at: <http://www.refworld.org/docid/57c977e34.html>. Accessed 29 July 2018

e) A requirement for all new schools to be designed and built following the principle of Universal Design through accessibility standards, together with a time frame for adaptation of existing schools in line with the Committee's general comment No. 2 (CRPD/C/GC/2). The use of public procurement to implement this element is encouraged.

f) Introduction of comprehensive quality standards for inclusive education and disability-inclusive monitoring mechanisms to track progress in implementation at all levels and ensure that policies and programmes are implemented and backed by the requisite investment.

g) Introduction of accessible monitoring mechanisms to ensure that policy, together with the requisite investment, is implemented.

h) Recognition of the need for reasonable accommodations to support inclusion, based on human rights standards, rather than on the efficient use of resources, together with sanctions for failure to provide reasonable accommodation.

i) All legislation that potentially impacts upon inclusive education within a country should clearly state inclusion as a concrete goal.

j) A consistent framework for the early identification, assessment and support required to enable persons with disabilities to flourish in inclusive learning environments.

k) An obligation on local authorities to plan and provide for all learners, including persons with disabilities, within inclusive settings and classes, including in the most appropriate languages, accessible formats, modes and means of communication.

l) Establishment of legislation to guarantee all persons with disabilities, including children with disabilities, the right to be heard and their opinion given consideration within the education system, including through school councils, governing bodies, local and national government, as well as mechanisms through which to challenge and to appeal decisions concerning education.

m) Creation of partnerships and coordination between all stakeholders, including persons with disabilities through OPDs, different agencies, development organizations, nongovernmental organizations (NGO), and with parents/caregivers.

The Mental Disorders Act of 1951 of the laws of Zambia, which For example, authorizes psychiatric interventions without free or informed consent, and the arrest and detention of

individuals with psychosocial and intellectual disabilities on the grounds of their disability or non-criminal behaviour associated with such disabilities, with minimal recourse for appeal and review. The Act refers to some persons with disabilities as “idiots”, lunatics”, or persons “apparently mentally disordered or defective”.

Other legislation containing discriminatory provisions against persons with disabilities include the Constitution (e.g., arts. 6 (2), 13 (1) (h), 16 (2) (i), 65 (1) (b), 70 (2)10 (d) and 83 (1) (b)) the Penal Code Act No. 87 (e.g., art. 139 on “defilement of imbeciles or person with mental illness”), the Criminal Procedure Code Act No. 88 (procedure in case of insanity or other incapacity of an accused person), the Prisons Act No. 97 (e.g., art. 70 on “mentally disordered or defective prisoners”), the Electoral Act No. 13 disqualifying persons with psychosocial disabilities from registering as voters (art. 7 (1) (d)), the Electoral Commission Act No. 17 enabling the removal of a member who is “insane or otherwise declared to be of unsound mind” (art. 5), the Citizens of Zambia Act No. 124 restricting registration as a citizen for people “adjudged or otherwise declared to be unsound of mind” (art. 17) and the Will and Administration of Testate Estates Act No. 60, which disqualifies people from legal acts on the basis of a disability (arts. 4 and 5).

The United Nations Special Rapporteur in her report¹⁷⁵ on the status on the enjoyment of the right of persons with disabilities observed that despite these important endeavours by the Zambian government to implement the provisions of the United Nations Convention on the Rights of Persons with Disabilities, 2006, there was still pieces of legislation that are in contradiction with the spirit of inclusion and equal participation in society, and discriminate against persons with disabilities. Particularly the right to vote and to stand for election for persons with disabilities which is intrinsically linked to legal capacity. In fact, article 6 (2) of the Constitution Chapter 1 of the laws of Zambia, provides that any person who under the laws of Zambia is adjudged or otherwise declared to be of “unsound mind” cannot be registered as a citizen; article 65 (1) (b) disqualifies a person from being elected as a member of the National Assembly for the same reason; and article 70 (2) (b) (2) disqualifies a person from being elected

¹⁷⁵ Human Rights Council, Thirty-fourth session 27 February-24 March 2017 Agenda item 3 Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development: Report of the Special Rapporteur on the rights of persons with disabilities on her visit to Zambia, para. 40.

as a Member of Parliament if that person has a “mental or physical disability that would make the person incapable of performing the legislative function”.

This therefore, calls for harmonisation of the national laws in order to ensure progress in the quest to promote and protect rights of persons with disabilities. The UN Special Rapporteur on the Rights of Persons with Disabilities recommended for the repeal and amendments of the laws that are retrogressive and discriminatory to persons with disabilities.

4.2 Institutional Challenges

Some of the challenges and barriers impeding the right to education for children with disabilities are as a result of the way institutions entrusted by law with the function to promote rights of persons with disabilities operate. The presence and functions of such institutions have a bearing on whether the rights of persons with disabilities are promoted and protected. One such institution is the Zambia Agency for Persons with Disabilities (ZAPD).

4.2.1 The Zambia Agency for Persons with Disabilities (ZAPD).

The Zambia Agency for Persons with Disabilities is a quasi-Government Institution established under an Act of Parliament, the Persons with Disabilities Act No. 6 of 2012 of the laws of Zambia. The Agency is established as a body corporate with perpetual succession and a common seal, capable of suing and of being sued in its corporate name.

The main functions of ZAPD include;

*“.....plan, promote and administer services for persons with disabilities; develop and implement measures to achieve equal opportunities for persons with disabilities by ensuring, to the maximum extent possible, that they obtain education and employment, participate fully in sporting, recreation and cultural activities and are afforded full access to community and social services”.*¹⁷⁶ These powers and functions place ZAPD in a strategic position to enhance the right of persons with disabilities including the right to education for children with disabilities.

Further, the Agency has the function to;

¹⁷⁶ Section 14 (a) (b) of the Persons with Disabilities Act No. 6 of 2016

“....promote, directly or indirectly, the development of human resources in the prevention of disabilities and in the provision of habilitation, rehabilitation, education and training services and the general welfare of persons with disabilities. Advise the minister on matters relating to the social and economic development and the general welfare of persons with disabilities; monitor and evaluate the provision of services to persons with disabilities and the implementation of this Act, and any policy and national strategy on disability and recommend necessary reforms to the Government. Advise relevant State organs and institutions on the provision of equal opportunities, empowerment and programmes and facilities to persons with disabilities.”¹⁷⁷

The study research revealed that despite all these clear and progressive provisions aimed at promoting and protecting the rights of persons with disabilities, ZAPD as an institution are not living up to the expectation of executing its functions in order to enhance the access to education for children with disabilities, among other services for persons with disabilities. This is as a result of many factors hampering the effective and efficient delivery of services to persons with disabilities by the Agency. Some of the reasons for lack of effective implementation of the provisions of this Act include the following:

- i. Most critical functions that should be taken by the Agency are not being undertaken such as research, evidence based advocacy and the inspections. Compliance to the provisions of the Act by persons and institutions dealing with matters relating to or affecting the rights of persons with disabilities calls for routine and timely inspections to assess whether the concerned officials and/or institutions such as schools are adhering to standards and requirements aimed at making schools accessible by children with disabilities so as to ensure their access to quality inclusive education. As at present, ZAPD only has one Inspector stationed at the Head Office in Lusaka. It is not feasible to expect this function of inspections to be effective in the entire country. The Agency is indeed understaffed especially, in key management level functions such as planning, research, legal and rehabilitation.¹⁷⁸

¹⁷⁷ Section 14 (m) (n) (o) and (p)

¹⁷⁸ Section 19 (5) of the Persons with Disabilities Act, No. 6 of 2012 states that; *The Agency may appoint, on such terms and conditions as it may determine, such other staff as it considers necessary for the performance of its functions under this Act.*

Section 58 of the Persons with Disabilities Act No. 6 of 2012, provides as follows;

“ (1) An inspector shall have power, on production of the identity card issued to the inspector under section fifty-seven, to inspect any institution to ensure that the provisions of this Act are being complied with.”

“ (2) In inspecting the institutions, referred to in subsection (1), an inspector shall ensure that adequate arrangements for the general welfare, education, training, rehabilitation, health, or employment are offered to persons with disabilities, and that records are kept, in accordance with this Act”.

- ii. The Agency does not have the right functional structure to ensure they undertake all functions as prescribed in the Act.
- iii. Despite the Persons with Disabilities Act No. 6 of 2012 of the laws of Zambia, not restricting the Agency to mobilise resources from other sources, they are reliant mainly on the Government for financial resources.
- iv. The Agency does not have a platform through which to engage the disability institutions and strengthen its coordination role.
- v. There is inadequate transport at all levels, especially the provincial coordinators most of them have no office transport hence making it difficult for them to carry out functions and activities that aim at promoting rights of persons with disabilities such as advocacy or sensitisation on the rights of persons with disabilities. Without sensitisation on the rights of persons with disabilities such as the right to education for children with disabilities, most children in rural areas do not enroll into primary education. Their parents or guardians do not prioritise the right to education for their children with disabilities, mainly due to lack of information on disability matters and government policy and programmes aimed at providing access to quality education for all children.

Suffice to mention that most of these challenges faced by the Zambia Agency for Persons with Disabilities identified during the period of research information gathering, have also been highlighted as areas for concern that need attention in the Zambia Agency for Persons

with Disabilities’ Strategic Plan, 2017-2021 whose theme is: *promoting inclusive and sustainable development*.¹⁷⁹

Other barriers facing children with disabilities in accessing education

4.3 Field results

The field survey conducted which included personal interviews with public officials, civil society organisations dealing with disability rights, children with disabilities and teachers in schools revealed a number of factors affecting the right to education for children (pupils) with disabilities. These barriers include the following:

i. Lack of reasonable accommodation in schools

One of the most common barriers to the right to education for children with disabilities in Zambia is lack of reasonable accommodation. According to section 2 of the Persons with Disabilities Act, No. 6 of 2012 as read with article 2 of the United Nations Convention on the Rights of Persons with Disabilities, 2006, Reasonable Accommodation means; “*necessary and appropriate modification, adaption and adjustments, not imposing undue burden, where needed in a particular case, to ensure to persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms.*”

In respect of a specific type of disability there is an obligation for States Parties to provide corresponding reasonable accommodation that aims at removing barriers and supports a pupil with a disability to enjoy their right to inclusive education on an equal basis with others without discrimination on account of their disability.

Accordingly, the treaty monitoring body, the United Nations Committee¹⁸⁰ has set out benchmark requirements on the respective reasonable accommodation to be provided by States Parties through their respective national implementing ministries or agencies alike. Thus;

¹⁷⁹ Zambia Agency for Persons with Disabilities, Strategic Plan, 2017-2021, p. 14-15.

¹⁸⁰ UN Committee on the Rights of Persons with Disabilities (CRPD), *General comment No. 4 (2016), Article 24: Right to inclusive education*, 2 September 2016, CRPD/C/GC/4, available at: <http://www.refworld.org/docid/57c977e34.html>. Accessed 29 July 2018

Regarding article 24, paragraph 3, many States parties are failing to make appropriate

Provision for persons with disabilities, particularly persons on the autism spectrum, those with communication impairments and with sensory disabilities, to acquire the life, language and social skills essential for participation in education and within their communities.

a) Blind and partially sighted students must be provided with opportunities to learn Braille, alternative script, augmentative and alternative modes, means and formats of communication, as well as orientation and mobility skills. Investment in access to appropriate technology and alternative communication systems to facilitate learning should be supported. Peer support and mentoring schemes should be introduced and encouraged.

b) Deaf and hard of hearing students must be provided with the opportunity to learn sign language, and measures taken to recognise and promote the linguistic identity of the deaf community. The Committee draws the attention of States parties to UNESCO's

Convention against Discrimination in Education which establishes the right of children to be taught in their own language, and reminds States parties that Article 30(4) requires that persons with disabilities are entitled, on an equal basis with others, to recognition of and support for their specific cultural and linguistic identity, including sign language and deaf culture. In addition, hard-of-hearing students must also have access to quality speech therapy services, induction loop technology and captioning.

c) Students who are blind, deaf or deafblind must be provided with education delivered in the most appropriate languages and modes and means of communication for the individual, and in environments which maximize personal, academic and social development both within and outside formal school settings. The Committee emphasises that for such inclusive environments to occur, States parties should provide the required support, including by way of resources, assisted technology, and provision of orientation and mobility skills.

- d) Learners with communication impairments must be provided with the opportunity to express themselves and learn using alternative or augmentative communication. This may include but is not limited to provision of sign language, low or high tech communication aids such as tablets with speech output, voice output communication aids (VOCAS) or communication books. States parties should invest in developing expertise, technology and services in order to promote access to appropriate technology and alternative communication systems to facilitate learning.*
- e) Learners with social communication difficulties must be supported through adaptations to classroom organisation, including working in pairs, peer tutoring, seating close to the teacher and the creation of a structured and predictable environment.*
- f) Learners with intellectual impairments must be provided with concrete, observable/visual and easy-read teaching and learning materials within a safe, quiet and structured learning environment, targeting capacities that will best prepare student for independent living and vocational contexts. States parties should invest in inclusive interactive classrooms using alternative instructional strategies and assessment methods.*

However, most schools surveyed do not have sufficient assistive devices and teaching and learning tools such as Braille paper, Large Prints, Hearing Aids, easily accessible sanitary facilities/toilets for pupils with disabilities, Lack of access to toilets in school was also a major barrier for children with disabilities. If a child cannot use the toilet all day while at school, he or she is much less likely to attend school. Even if toilets have been adapted to make them accessible, they must be maintained. In cases where schools do not have adapted toilets, they may use this as an excuse to keep boys and girls with disabilities out of the school, saying that there are no staff helpers who can take children to the washroom.

Learning materials such as text books for pupils are not in an accessible format such as braille for the deaf pupils. All these facilities and equipment make the pupil with

disability learn. One of the interviewed female teacher of special education, stressed the importance of teaching aids;

“Some words are difficult to sign and the teacher can only better demonstrate and show pupils using charts/diagrams for teaching.”

From the built environment point of view, some classrooms do not have ramps so as to allow pupils with physical disabilities who are wheel chair users access the classrooms in order to attend class lesson. In this regard, the United Nations Committee on the rights of persons with disabilities in its General Comment No.4¹⁸¹ guides as follows;

Articles 9 and 24 are closely interconnected. Accessibility is a precondition for the full and equal participation of persons with disabilities in society. Persons with disabilities cannot effectively enjoy their right to inclusive education without accessibly built environment, including schools and all other places of education, without accessible public transport, services, information and communication. Modes and means of teaching should be accessible and should be conducted in accessible environments. The whole environment of students with disabilities must be designed in a way that fosters inclusion. Inclusive education itself, on the other hand, is a powerful tool for the promotion of accessibility and universal design.

The lack of reasonable accommodation including the area of built environment in schools has led to the continuation of the separate/segregated system of education where Special Units are created for pupils with disabilities instead of an inclusive education system.

ii. Lack of Specialised training among teachers

¹⁸¹ UN Committee on the Rights of Persons with Disabilities (CRPD), *General comment No. 4 (2016), Article 24: Right to inclusive education*, 2 September 2016, para. 47, CRPD/C/GC/4, available at: <http://www.refworld.org/docid/57c977e34.html>. Accessed 29 July 2018

For there to be quality education, it goes without saying that there is the obvious need for trained teachers to offer education services among other factors. If teachers responsible for pupils with disabilities have not undergone specialised training, chances are that they will not fully understand and appreciate the special needs of the pupils with disabilities under their charge.

The need for qualified teachers has also been reflected in the Education Act of 2011 and the Persons with Disability Act of 2012. Specifically, the Education Act Section 23(8) emphasises the need for well-qualified teachers in order to provide quality education to children with special education needs. The Persons with Disability Act in Zambia of 2012, PART V: Sections 22 to 25 spells out, the need for an inclusive type of education system at all levels of education in Zambia and provision of quality education to children with disability. The implication of these two Acts (Education Act 2011 and Persons with Disabilities Act No. 6 of 2012) is that every classroom will include a student(s) with diverse needs and that teachers should endeavour to meet the needs of the learners in the classroom. Therefore, in order for all students to achieve quality education, teacher education programs must prepare teachers to develop their knowledge of diversity, skills for interpersonal communication, and appropriate dispositions to work with students and parents from different backgrounds.

Some school teachers teaching classes which are practicing inclusive education have not undergone Specialised Teacher Training. This has led to negative attitude of teachers towards pupils with disabilities and thereby adversely affecting the learning abilities of the pupils.

Moreover, most pupils with disabilities prefer to be taught by a teacher with a disability as they are able to relate with them and feel more inspired to learn. Pupils with disabilities complained that teachers who did not have specialised teacher training in children with special educational needs do not understand and appreciate their needs when teaching them. For example, when a teacher is dictating notes, she

or he may not take into account that the visually impaired pupils using Stylus to write would take need more time than one with good vision writing in an ordinary book. The situation is exacerbated when most teachers are not competent to teach using sign language.

Given that regular and special education teachers are the service providers in teaching students with special needs in the inclusive classroom in Zambia, their attitude towards educating students with special needs is a contributing factor to their success or failure. Teachers who are ill prepared or uncomfortable with the concept of inclusion may pass that discontent onto the students, which in turn can undermine the confidence and success of those students. Conversely, teachers who support and believe they are prepared for the concept of inclusion can provide a conducive environment thereby making pupils have confidence and a comfortable learning environment.¹⁸²

The learning capacities of pupils with disabilities is slower than those without disabilities; teachers indicated that 1 pupil with a disability is equivalent to 10 pupils without disability as regards the rate at which they comprehend lessons. Therefore, a class of 4 pupils with disabilities is as good as a class of 40 pupils without disabilities.¹⁸³

iii. Discrimination and stigma

Many people especially in rural and remote areas in Zambia still discriminate against persons with disabilities and children are even more vulnerable to stigma. Traditional and cultural beliefs play a significant role in the way impairment is perceived in Zambian society. In fact, it has traditionally been associated with misfortune or punishment in the family, caused by ancestral spirits or witchcraft. Owing to these beliefs, many persons with disabilities are discriminated against and are excluded

¹⁸² Interview with Febby Mubita, Senanga, 17 April 2017

¹⁸³ This is based on information obtained by author during visits and interviews with schools and teachers respectively, of Special Education. Notes and audio records available for verification purposes.

from their communities and society, as they are considered to be incapable of carrying out daily activities.¹⁸⁴

These beliefs of witchcraft and curses about children with disabilities cause parents to hide their children born with disabilities thereby denying the children their right to education. According to Boniface, the Senior Education Standards Officer in charge of Special, there are many children with disabilities that are confined in their parents' homes compared to those that have been enrolled in schools.¹⁸⁵

iv. Some schools are not examination centres

Some of the schools especially private/non-government which are offering education services to children with disabilities are not yet registered with the Examination Council of Zambia¹⁸⁶. The implication is that during examination time, all the pupils in examination classes are required to go and sit for exams from a different school. This has a disadvantage on the pupils who feel that they are in a strange place with different teachers who may not even be trained in special education invigilating the exams. This affects mainly the visually impaired pupils who are used to one particular environment and feel that they are in a strange place.¹⁸⁷

v. Misinterpretation of the concept of Inclusive Education and other key concepts

There was generally a lack of understanding among most officials on the meaning of concepts of education such as *inclusive education*. Some confused inclusive education with *integration* of children with disabilities. Integration labels children as having problems which require “fixing” by experts before they can be mainstreamed. Inclusive education on the other hand, views mainstream education systems as having barriers to learning that require to be challenged. Inclusive Education is wider than Special education, in fact special education is a subset of Inclusive Education.

¹⁸⁴ United Nations Special Rapporteur on the Rights of Persons with Disabilities, report on Zambia, p. 10

¹⁸⁵ Interview with Boniface Kanema, Solwezi, 15 May 2018

¹⁸⁶ The Examination Council of Zambia is a public institution responsible for inspecting, monitoring and registration of schools as examination centres so that the respective schools can administer examination from their school.

¹⁸⁷ Interview on 16 May 2018

The Committee¹⁸⁸ highlights the importance of recognising the differences between exclusion, segregation, integration and inclusion. Exclusion occurs when students are directly or indirectly prevented from or denied access to education in any form. Segregation occurs when the education of students with disabilities is provided in separate environments designed or used to respond to a particular or various impairments, in isolation from students without disabilities. Integration is a process of placing persons with disabilities in existing mainstream educational institutions, as long as the former can adjust to the standardized requirements of such institutions.

Inclusion involves a process of systemic reform embodying changes and modifications in content, teaching methods, approaches, structures and strategies in education to overcome barriers with a vision serving to provide all students of the relevant age range with an equitable and participatory learning experience and environment that best corresponds to their requirements and preferences. Placing students with disabilities within mainstream classes without accompanying structural changes to, for example, organisation, curriculum and teaching and learning strategies, does not constitute inclusion. Furthermore, integration does not automatically guarantee the transition from segregation to inclusion.

Therefore, understanding the key features and aspects that underpin the right to inclusive education by government officials, teachers, parents and other concerned stakeholders in the provision of education services to children with disabilities is at the centre of effective application and provision of inclusive education to children with disabilities in the overall educational framework in Zambia.

5. Chapter V: Conclusions and Recommendation

This chapter consists of the conclusions drawn and recommendations suggested to improve on efforts toward the provision of reasonable accommodation for children with disabilities in Zambian schools for the right to education.

¹⁸⁸ UN Committee on the Rights of Persons with Disabilities (CRPD), *General comment No. 4 (2016), Article 24: Right to inclusive education*, 2 September 2016, CRPD/C/GC/4, available at: <http://www.refworld.org/docid/57c977e34.html>. Accessed 29 July 2018

5.1 Conclusions

It is evident that Zambia faces still has flaws in the provision of education to children with disabilities. This is despite a set of legislation both international human rights instruments and national laws and policies. In her report on the rights of persons with disabilities in Zambia, the Special Rapporteur expressed concern about the existence of policies and legislation that are discriminatory towards persons with disabilities. She noted for instance the widespread use of pejorative language to refer to persons with disabilities in several official documents (e.g., persons of “unsound mind”, “imbeciles”, “mentally retarded”), as well as the existence of different definitions of disability based on medical criteria that are contrary to the spirit of the Convention on the Rights of Persons with Disabilities.¹⁸⁹

The Special Rapporteur was particularly concerned about the discriminatory provisions against persons with psychosocial disabilities contained in the outdated Mental Disorders Act of 1951, which is not compliant with the Convention but which continues to be in effect and applied by national authorities. For example, the Act authorizes psychiatric interventions without free or informed consent, and the arrest and detention of individuals with psychosocial and intellectual disabilities on the grounds of their disability or non-criminal behaviour associated with such disabilities, with minimal recourse for appeal and review.¹⁹⁰

The Mental Disorders Act of 2015, refers to those persons as “idiots”, “lunatics”, or persons “apparently mentally disordered or defective”. The Special Rapporteur was pleased about the plan to replace the Act with a new mental health bill, and welcomed the request for technical assistance she received from the Ministry of Health to review the new bill for compliance with the Convention. However, despite repeated requests and efforts to engage on this issue, to date she has not received a copy of the draft bill.

However, there has also been significant progress made by both the Zambian government and other stakeholders. Notable among these achievements are the ratification and domestication of the United Nations Convention on the Rights of persons with Disabilities, 2006 by the Zambian government through the enactment of the enabling Act of parliament, the Persons with

¹⁸⁹ Human Rights Council, Thirty-fourth session 27 February-24 March 2017 Agenda item 3 Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development: Report of the Special Rapporteur on the rights of persons with disabilities on her visit to Zambia, p. 7

¹⁹⁰ Ibid

Disabilities Act, No. 6 of 2012, and the formulation of supporting policies through its implementing agency and ministries such as the Zambia National Policy on Disability, the National Education Policy, the Strategic Plan for the Zambia Agency for Persons with Disabilities and indeed the Seventh National Development Plan of the Republic of Zambia. All these policy documents are designed to inclusive and effective participation of persons with disabilities in economic, social, cultural and political space of the country.

In her report, The Special Rapporteur welcomed the efforts made in recent years by the Ministry of General Education and the Ministry of Higher Education to improve access to education for children, youths and adults with disabilities. They included the enactment of the Education Act (2011), the introduction of a mandatory course in special education needs for primary school level at the teacher training colleges of education, the development of a revised curriculum for primary school learners with disabilities, the removal of examination fees for children with disabilities reaching grades 9 and 12, the availability of bursaries for trainees with disabilities in vocational training and the pilot inclusive vocational training centres run by the Technical Education, Vocational and Entrepreneurship Training Authority.¹⁹¹

The above notwithstanding, the Special Rapporteur was alarmed to learn that 38,000 children dropped out of school at grade 10 in 2015 because of an insufficient number of secondary schools. In this context, it was mainly students with disabilities who were affected as they were competing with other children for admission. Moreover, the vast majority of children with disabilities were excluded from the general education system because of the multiple barriers to accessing education on an equal basis with others, owing to the lack of accessible infrastructure, the unavailability of assistive devices and materials adapted for different types of impairments and the lack of individual learning plans and accommodation in the classrooms.¹⁹²

There are still inequities in education provision in terms of gender imbalances rural/urban, poor/rich and people with special educational needs.¹⁹³

¹⁹¹ Human Rights Council, Thirty-fourth session 27 February-24 March 2017 Agenda item 3 Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development: Report of the Special Rapporteur on the rights of persons with disabilities on her visit to Zambia, p. 10

¹⁹² Ibid

¹⁹³ Ministry of Education, *National Report: Zambia-development of education*, 2000, p. 10

5.2 Recommendations

Arising from the findings of the study and generally the discussion of the research topic, the following are some suggested recommendation that may lead to the improvement on the provision of reasonable accommodation for the right to education for children with disabilities.

- i. With regard to institutional challenges in the promotion and protection of the rights of persons with disabilities, which include the right to education for children with disabilities, there is need for continued strengthening the capacities of the Zambia Agency for Persons with Disabilities to coordinate disability issues within the State apparatus and monitor the implementation of the United Nations Convention on the Rights of Persons with Disabilities, 2006.
- ii. In respect of legal framework and policy formulation the government of Zambia should consider ratifying the Optional Protocol to the Convention on the Rights of Persons with Disabilities and the optional protocols to other international human rights instruments to which Zambia is party and conduct a comprehensive legislative review to fully harmonize the national legal framework with the provisions of the Convention, including by revoking discriminatory provisions of the Constitution, the Penal Code, the Criminal Procedures Code, the Prisons Act, the Electoral Act and the Mental Disorders Act. Government and its implementing agencies and ministries alike should ensure that any new legislation on mental health fully complies with the spirit of the United Nations Convention on the Rights of Persons with Disabilities, 2006. Additionally, the required statutory instruments on accessibility, health, education, transport and employment to enable the adequate implementation of the Persons with Disabilities Act No. 6 of 2012 should be formulated and enacted.
- iii. In accordance with the principle of *progressive realisation*, actualize and increase allocation of resources under the incentives for allowances to children with disabilities as provided for in the Persons with Disabilities Act No. 6 of 2012, as an attempt of affirmative action to motivate more children with disabilities to enroll into schools.

- iv. As regards teaching and learning aids, there is need for government through the Ministry of Education to provide sufficient learning and teaching tool such as graphs, diagrams, charts, braille in order for the pupils with disabilities to understand concepts and lessons on equal basis with others.¹⁹⁴ This is as important as the curriculum taught to pupils with disabilities is the same curriculum with those without disabilities, hence the need to provide them with reasonable accommodation in terms of teaching and learning aids for quality education.
- v. The Ministry of education should put deliberate measures to ensure that more teachers with specialised training in special education are employed and deployed to schools for improved teacher-to-pupil relationship and understanding the special needs for pupils with disabilities. Teachers who take classes in an inclusive education setting must have knowledge of sign language to be able to convey appropriately the content of the teaching lessons. This disposition is further affirmed by the United Nations Committee in General Comment No. 4 of 2016 on the Rights of Persons with Disabilities, wherein they stated that;¹⁹⁵

Article 24, paragraph 4 requires States parties to take appropriate measures to employ administration, teaching and non-teaching staff with the skills to work effectively in inclusive education environments and qualified in sign language and/or Braille, orientation and mobility skills. An adequate number of qualified and committed school staff is a key asset in the introduction and sustainability of inclusive education. The lack of understanding and capacity remain significant barriers to inclusion. States parties must ensure that all teachers are trained in inclusive education based on the human rights model of disability. States parties must invest in and support the recruitment and continuous education of teachers with disabilities. This includes removing any legislative or policy barrier requiring candidates to fulfil specific medical eligibility criteria, and the provision of reasonable accommodations

¹⁹⁴ Appendix 2 shows some of the teaching and learning aids necessary for certain group of pupils with disabilities

¹⁹⁵ UN Committee on the Rights of Persons with Disabilities (CRPD), *General comment No. 4 (2016), Article 24: Right to inclusive education*, 2 September 2016, CRPD/C/GC/4, available at: <http://www.refworld.org/docid/57c977e34.html>. Accessed 29 July 2018

for their participation as teachers. Their presence will serve to promote equal rights for persons with disabilities to enter the teaching profession, bring unique expertise and skills into learning environments, contribute to breaking down barriers and serve as important role models.

Teachers are game changers, if they are not reoriented they remain spectators. All pupils with hearing impairment are more encouraged to learn and are comfortable when a teacher is competent in sign language. Lack of specialised training in special education by teachers affects the quality of delivery of education services in a class room and generally the school environment.

- vi. Establish, under the overall direction of the Zambia Agency for Persons with Disabilities, a mechanism to coordinate the implementation of the United Nations Convention on the Rights of Persons with Disabilities, 2006, within the State and enhance the effectiveness of the disability focal points by providing adequate terms of reference and training and attributing full-time responsibilities to them and designate or create an independent monitoring mechanism compliant with the Paris Principles, such as the Human Rights Commission, to monitor the implementation of the Convention in accordance with article 33 (2) of the United Nations Convention on the Rights of Persons with Disabilities, 2006.
- vii. There should be more sensitisation by ZAPD and other stakeholders on the right to education for children with disabilities and about the availability of government schools which are open to all children without discrimination on account.

The importance of information dissemination on disability issues is further recognised by the Committee¹⁹⁶ when it states as follows;

Article 8 calls for measures to raise awareness and challenge stereotypes, prejudices and harmful practices regarding persons with disabilities, particularly targeting those affecting women and girls with disabilities and persons with intellectual

¹⁹⁶ UN Committee on the Rights of Persons with Disabilities (CRPD), *General comment No. 4 (2016), Article 24: Right to inclusive education*, 2 September 2016, para. 46, CRPD/C/GC/4, available at: <http://www.refworld.org/docid/57c977e34.html>. Accessed 29 July 2018

disabilities and intensive support requirements. These barriers impede both access to, and effective learning within the education system. The Committee notes the practice of some parents of children without disabilities removing their children from inclusive schools, based on lack of awareness and understanding of the nature of disability. States parties must adopt measures to build a culture of diversity, participation and involvement into community life and to highlight inclusive education as a means to achieve a quality education for all students, with and without disabilities, parents, teachers and school administrations, as well as the community and society. States parties must ensure that mechanisms are in place to foster, at all levels of the education system, and among parents and the wider public, an attitude of respect for the rights of persons with disabilities. Civil society, in particular OPDs, should be involved in all awareness raising activities.

There are so many children in villages that have been confined to their homes, either due to over protection by their parents or that the parents think a child with disability cannot do anything, let alone comprehend in a class room. Some parents hide their children due to the stigma and discrimination towards children with disabilities that are considered by some traditional myths as being a curse or misfortune.

- viii. Early identification of talents and abilities in vocational education among the pupils with disabilities. Vocational training is one stream of education where many children with disabilities have strength as compared to academic model. Most pupils with disabilities are good at drawing, home economics such as cooking, baking. Some are good at art, music, and dance.¹⁹⁷

Readers may wish to note that some of the suggested recommendations highlighted above are by and large been mentioned as priority areas of action by the United Nations Special Rapporteur during her visit to Zambia on the status of rights for persons with disabilities in Zambia.¹⁹⁸

¹⁹⁷ Appendix 3 shows some of the art drawn by pupils with disabilities

¹⁹⁸ Human Rights Council, Thirty-fourth session 27 February-24 March 2017 Agenda item 3 Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development: Report of the Special Rapporteur on the rights of persons with disabilities on her visit to Zambia, p.20

6.0 Bibliography

Literature

Beco, G., The Right to Inclusive Education According to Article 24 of the UN Convention on the Rights of Persons with Disabilities: Background, Requirements and (Remaining) Questions' (2014) 32 Netherlands Quarterly of Human Rights.

Carmody, B., *The Evolution of Education in Zambia*, Ndola, Mission Press, 2016

FERENCH, B., "Right to Education", M. Nowak, K. M. Januszewski, Hofstatter, *All Human Rights for All, Vienna Manual on Human Rights*, Vienna, intersentia, 2012

Freeman, M., *Human Rights: An interdisciplinary approach*, (2nd ed.), Cambridge, UK, Polity Press, 2011

Kayess, R., French, P., '*Out of Darkness into Light - Introducing the Convention on the Rights of Persons with Disabilities*' (2008)

Kothari, C.R., *Research Methodology: Methods and Techniques (Second Revised edition)*, New Delhi, New Age International (P) limited Publishers, 2004

Lawson, A., *Disability and Equality Law in Britain the Role of Reasonable Adjustment* (Hart Pub 2008)

Leonard Cheshire Disability, *Inclusive Education: An introduction*

Munsanje, J. S., Kalabula, D., Nzala, A. M., *Inclusive education for children with visual impairments in Zambia: a situational analysis*

Muwana, C. F., *Zambian Student Teachers' Attitudes toward including students with Disabilities in General education Classrooms*, University of Illinois, 2012.

Mwamba, M. N., Ministry of Education HQs, *LEAVING NO ONE BEHIND: A GOVERNMENT POLICY DIRECTION ON THE STATUS OF INCLUSIVE EDUCATION IN ZAMBIA*. A presentation to the Inclusive Education symposium held at *Raddisson blu* hotel on 30 November 2017

Nowak, M., Januszewski, K.M, Hofstatter, *All Human Rights for All, Vienna Manual on Human Rights*, Vienna, intersentia, 2012

O' Cinneide, C., '*A New Generation of Equality Legislation? Positive Duties and Disability Rights*' in Anna. Lawson and Caroline Gooding (eds), *Disability Rights in Europe from Theory to Practice (Essays in European law*, Hart Pub 2005)

Quinilivan S, '*Reasonable Accommodation in Education*' (2015) 4 the Irish Community Development Law Journal 16

Report of the United Nations Special Rapporteur on the rights of persons with disabilities on her visit to Zambia, 2016

Republic of Zambia, Central Statistical Office, *Zambia: 2015 Living Conditions Monitoring Survey: Key Findings*

Serpell, R., Folotiya, J., Jacqueline, *Basic Education for Children with Special Needs in Zambia Progress and Challenges in the Translation of Policy into Practice. Psychology and Developing Societies.* (2011)

Stone, D., *Policy paradox: The art of political decision making (Revised edition)*, New York, W.W. Norton & Company, Inc., 2001

Tesemma, S. T., '*Educating Children with Disabilities: Zambia*' (2011)

The African Commission on Human and People's Rights, *Free Legal Assistance Group and Others v. Zaire*, Communication Nos. 25/89, 47/90, 56/91, 100/93 (1995)

United Nations Educational and Cultural Organisation (UNESCO), Policy Brief on Early Childhood: *Inclusion of Children with Disabilities: The Early Childhood Imperative* N° 46 / April – June 2009

United Nations Educational Scientific and Cultural Organisation

UN Committee on the Rights of Persons with Disabilities (CRPD), *General comment No. 4, Article 24: Right to inclusive education.* (2016)

UN Committee on the Rights of the Child (2104th Meeting held from 22.01.2016 to 29.01.2016- CRC/C/ZMB/2-4, Considerations of report submitted by States parties under article 44 of the Convention- CRC/C/SR.2104) Concluding Observations on the Combined Second and fourth periodic reports of Zambia, CRC/C/SR.2104)

UN Committee on the Rights of Persons with Disabilities (CRPD), *General comment No. 4 (2016), Article 24: Right to inclusive education*, 2 September 2016

USAID, Meeting EFA: *Zambia Community Schools* (Case study, 2006)

World Network of Users and Survivors of Psychiatry; *Implementation manual for the United Nations Convention on the Rights of Persons with Disabilities*, February, 2008

Legal documents

African Charter on Human and Peoples' Rights

African Charter on the Welfare and Rights of the Child

The Constitution of Zambia, Chapter 1 of the Laws of Zambia

The Constitution (Amendment) Act No. 2 of 2016 of the Laws of Zambia

The Education Act No. 23 of 2011 of the Laws of Zambia

The Persons with Disabilities Act No. 6 of 2012 of the Laws of Zambia

International Covenant on Economic, Social and Cultural Rights, 1966

United Nations Convention on the Rights of the Child, 1989

United Nations Convention on the Rights of Persons with Disabilities, 2006

Universal Declaration of Human Rights, 1948

Policy Documents

Curriculum Development Centre, *Education Curriculum Framework* (2013)

Republic of Zambia, Ministry of Education, Science, Vocational Training and Early Education, *'Education for All 2015 National Review'* (June 2015)

Republic of Zambia, Ministry of Education: *Educating Our Future-National Policy on Education*, 1996
Ministry of Education, *"Focus on Learning"*

Republic of Zambia, National Policy on Disability, 2015

Republic of Zambia, Ministry of General Education, *2015 Educational Statistical Bulletin* (May 2016)

United Nations Educational Scientific and Cultural Organisation, 2008

Zambia Agency for Persons with Disabilities, Strategic Plan, 2017-2021

Zambia Federation of Disability Organization, 2011

Internet sources

https://www.google.at/search?source=hp&ei=4JbW4TjOMXRwAL1rKH4Bw&q=when+did+zambia+ratify+the+crc&oq=when+did+zambia+ratify+the+&gs_l=psy-ab.3.0.0i22i30k1.3524.12645.0.20660.28.26.0.0.0.0.597.4873.2-4j6j0j3.13.0....0...1.1.64.psy-ab..15.12.4550.0..0j0i3k1j33i22i29i30k1.0.Fk53gNj8byM

https://www.google.at/search?source=hp&ei=-4JbW4TjOMXRwAL1rKH4Bw&q=when+did+zambia+ratify+the+crc&oq=when+did+zambia+ratify+the+&gs_l=psy-ab.3.0.0i22i30k1.3524.12645.0.20660.28.26.0.0.0.0.597.4873.2-4j6j0j3.13.0....0...1.1.64.psy-ab..15.12.4550.0..0j0i3k1j33i22i29i30k1.0.Fk53gNj8byM

Accessed 27 July 2018.

https://www.google.at/search?ei=31pdW96SMrdgAaptqagBw&q=when+was+the+african+commission+on+human+and+peoples%27+rights+established&oq=when+was+the+african+commission+on+human+and+peoples%27+rights+established&gs_l=psy-ab.3...34311848.34340765.0.34342537.123.71.0.0.0.0.610.9418.3-12j7j4.23.0..2..0...1.1.64.psy-ab..100.18.7619.0..0j0i22i30k1j33i160k1j33i22i29i30k1.0.zDZ6oV91xC4

Accessed 29 July 2018

<http://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.170.4465&rep=rep1&type=pdf#page=1&zoom=auto,-107,52>

Accessed 27 July 2018.

https://www.google.at/search?ei=EoNbW7eWHYLXwQLVwKuACA&q=when+did+zambia+ratify+the+african+charter&oq=when+did+zambia+ratify+the+african&gs_l=psy-ab.1.0.33i22i29i30k1i2.162759.172126.0.175432.10.10.0.0.0.0.487.1726.3-4j1.5.0....0...1.1.64.psy-ab..5.5.1724...0i22i30k1j35i39k1.0.Z7oEzU2Znks

Accessed 27 July 2018.

https://www.google.at/search?ei=EoNbW7eWHYLXwQLVwKuACA&q=when+did+zambia+ratify+the+african+charter&oq=when+did+zambia+ratify+the+african&gs_l=psy-ab.1.0.33i22i29i30k1i2.162759.172126.0.175432.10.10.0.0.0.0.487.1726.3-4j1.5.0....0...1.1.64.psy-ab..5.5.1724...0i22i30k1j35i39k1.0.Z7oEzU2Znks

[4j1.5.0....0...1.1.64.psy-ab..5.5.1724...0i22i30k1j35i39k1.0.Z7oEzU2Znks](#). Accessed 27 July 2018.

<http://www.achpr.org/instruments/achpr/ratification/>. Accessed 27 July 2018

<http://www.achpr.org/instruments/achpr/ratification/>. Accessed 27 July 2018.

Interviews

Interviews with Fabian Mambwe, Lusaka, 20 June 2018

Interviews with Boniface Kanema, Solwezi, 15 May 2018

Interview with Febby Mubita, Senanga, 17 April 2018

Interview with Mpingila John Sondash, Solwezi, 16 May 2018

Appendices

Appendix 1.

Interview guideline

Programme: Vienna Master of Arts in Human Rights| University of Vienna

Topic: *The duty to provide reasonable accommodation in schools for children with disabilities in Zambia: need for progressive realisation for the right to education*

S/N	Category of Interviewee	Nature and scope of question
01	Government and quasi government and Civil society/Non-governmental organisations officials	<ol style="list-style-type: none">What is reasonable accommodation in relation to access to education for children with disabilities?What do you understand by the concept of progressive realisation?What kind of barriers do you think are faced by children with disabilities as regarding their right to access to education?How are practical challenges addressed in

		<p>order to realise the right to education for children with disabilities?</p> <p>v. What role does/should civil society play in the promotion of the right to education for children with disabilities?</p> <p>vi. What are the other stakeholders and what role can they play in the provision of reasonable accommodation for the right to education?</p>
02	Children	<p>i. What is okay for you in school?</p> <p>ii. What do you like?</p> <p>iii. What do you think is necessary for you in school?</p> <p>iv. What do you want to become after you complete school? And why this choice?</p>

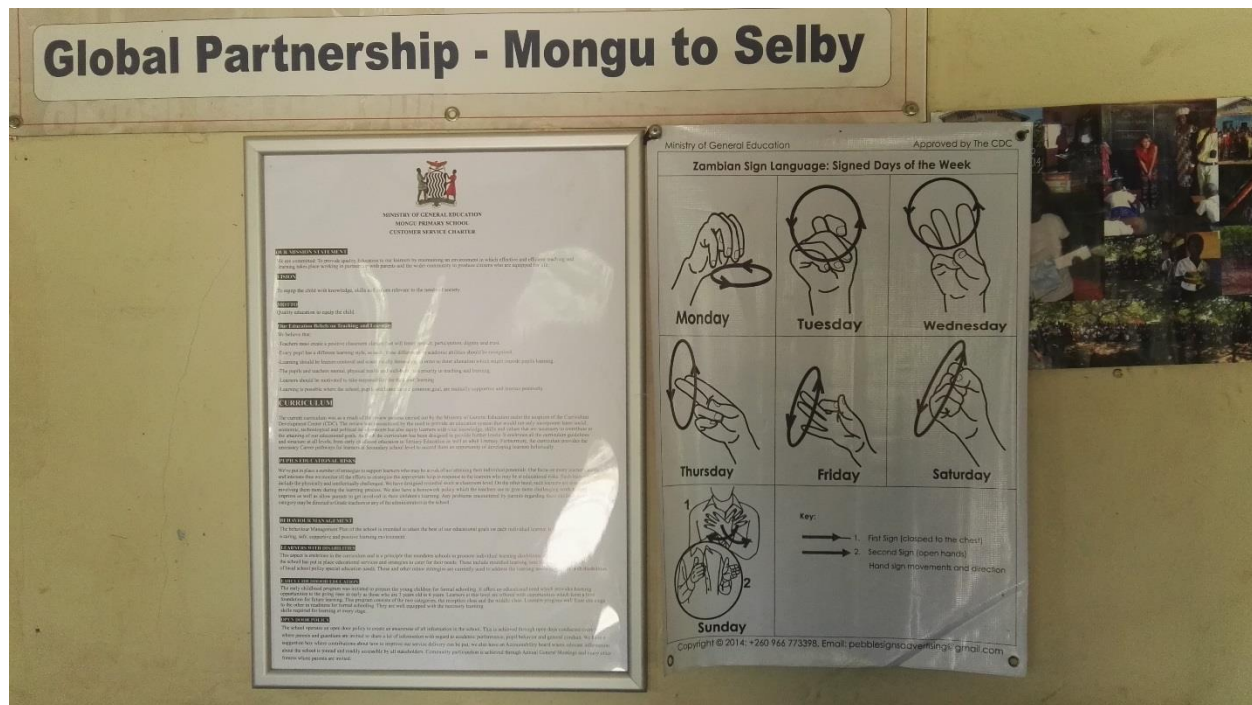


Figure 1 photo credit: Kayuma J. Makayi

Appendix 3. Artifacts drawn by pupils with disabilities at St. Mary's Special School, Solwezi District.

Figure 2 photo credit: Kayuma J. Makayi



Figure 3 Photo credit: Kayuma J. Makayi



Figure 4 Photo credit: Kayuma J. Makayi

Appendix 4. European Union Pilot Project enhancing inclusive education-Luapula Province



Figure 5 photo credit: on-line