

## A CRITICAL APPRAISAL OF THE RIGHT TO INCLUSIVE EDUCATION FOR CHILDREN WITH DISABILITIES IN ZIMBABWE

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### ABSTRACT

*Zimbabwe is a state party to a number of international human rights instruments that guarantee the rights of children with disabilities which include the United Nations Convention on the Rights of the Child, the International Covenant on Economic, Social and Cultural Rights, the African Charter on Human and Peoples' Rights and the African Charter on the Rights and Welfare of the Child. The instruments guarantee the right to education, among other rights. However, studies conducted in the past decade show that children with disabilities in Zimbabwe do not realize their right to education due to inaccessible school environments and infrastructure, lack of resources and facilities and the absence of a general policy on inclusive education, among other reasons. To further compound the situation, Zimbabwe is not a party to the United Nations Convention on the Rights of Persons with Disabilities which explicitly guarantees the right to inclusive education at all levels, among other rights.*

*In light of this situation, this paper analyses the extent to which Zimbabwe is taking appropriate measures to implement the right to inclusive education for children with disabilities. Accordingly, the underlying assumption is that if Zimbabwe does not undertake the appropriate legislative, institutional and policy measures that comply with the international standards on the right to inclusive education, children with disabilities will not be able to enjoy their right to education.*

**Keywords:** inclusive education, children with disabilities, disability rights, treaty obligations, Zimbabwe

## 1. INTRODUCTION

It has been observed that the right to education for children with disabilities (CWDs) is both the most important right and the most denied right.<sup>1</sup> The importance of the right to education for CWDs, and in general, cannot be underestimated. According to the Committee on Economic, Social and Cultural Rights:

Education is both a human right in itself and an indispensable means of realizing other human rights. As an empowerment right, education is the primary vehicle by which economically and socially marginalized adults and children can lift themselves out of poverty and obtain the means to participate fully in their communities...Increasingly, education is recognized as one of the best financial investments States can make. But the importance of education is not just practical: a well-educated, enlightened and active mind, able to wander freely and widely, is one of the joys and rewards of human existence.<sup>2</sup>

In Zimbabwe, education for CWDs has not been strongly tabled as part of the human rights and development agenda. There are damning statistics on education and CWDs. It has been reported that of every three children out of school, one is a child with a disability.<sup>3</sup> In addition, it has been reported that 75% of CWDs never complete primary school.<sup>4</sup> Thus throughout the Zimbabwean history, CWDs have been and are still denied access to education and other fundamental entitlements.

Although inclusive education has been actively considered since 1994, there is still a lot of skepticism about and ambivalence towards its implementation within the education sector in Zimbabwe.<sup>5</sup> It appears that inclusive education is not part of the training component for teachers in most of the teachers' colleges in Zimbabwe. As a result, teachers graduate from the training colleges without the requisite skills and competences to teach inclusive classes.<sup>6</sup> Furthermore, a

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<sup>1</sup> U Kilkelly (2002) 'Disability and Children: The Convention on the Rights of the Child (CRC)' in G Quinn & T Degener (eds) (2002) *Human rights and Disability* 119.

<sup>2</sup> General Comment No. 13 'The right to education (article 13 of the Covenant)' para 1.

<sup>3</sup> Inter-Censal Demographic Survey (1997); R Lang & G Charowa 'DFID scoping study: Disability issues in Zimbabwe' (July 2007) available at <http://www.ucl.ac.uk/lc-ccr/downloads/scopingstudies/dfid-zimbabwe-report> (accessed 6 September 2013).

<sup>4</sup> 'The plight of deaf and dumb children in education' *Manica Post*, 20 December 2011.

<sup>5</sup> O Mafa 'Challenges of implementing inclusion in Zimbabwe's education system' available at <http://www.onlineresearchjournals.org/IJER/abstract/2012/may/Mafa.htm> (accessed 17 January 2013).

<sup>6</sup> As above.

number of school environments are not accessible to CWDs. As a result, Poverty, misery, illiteracy, joblessness and social exclusion are some of the common plights that CWDs face frequently when compared their non-disabled counterparts. Without the requisite knowledge and skills, it is very difficult if not impossible for the children to secure any form of employment when they grow up. In the end, a vicious cycle of poverty and disability is created. Yet the Zimbabwean legal framework for the realisation of the right to education for CWDs appears not to adequately address their plight.

It is against such a background that this paper examines Zimbabwe's international obligations for the realisation of the right to inclusive education for CWDs. The paper is divided into five six sections starting with the introduction. The second section deals with the conceptualisation of disability. The section discusses the major models of disability namely the medical, social and human rights models. The third section discusses the three major approaches to the education of CWDs which are the special, integrated and inclusive schools approaches. The fourth part indicates Zimbabwe's international obligations under the International Covenant on Economic, Social and Cultural Rights (CESCR), the Convention on the Rights of the Child (CRC), the African Charter on Human and Peoples' Rights (African Charter) and the African Charter on the Rights and Welfare of the Child (ACRWC). The fifth section is a brief appraisal of the national laws that guarantee the right to education for CWDs in Zimbabwe. The section indicates the extent to which Zimbabwean national laws are compatible with the international obligations for the realisation of the right to education by CWDs. The final section is the conclusion. It proffers specific as well as general recommendations. Although Zimbabwe is not a ratifying party to the Convention on the Rights of Persons with Disabilities (CRPD), the Convention will be given reference to since it embodies the best standards for the right to inclusive education for CWDs.

## **2. CONCEPTUALISATION OF DISABILITY**

Disability is a dynamic and a highly contested concept with no agreed definition.<sup>7</sup> Thus, the issues surrounding the definition of disability have been described as knotty and complex.<sup>8</sup> Nonetheless, there are some working definitions of disability. Kayess and French state that

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<sup>7</sup> World Health Organisation (WHO) & World Bank *World report on disability* (2011) 10.

<sup>8</sup> D Kaplan *The definition of disability* available at <http://www.accessiblesociety.org/topic/demographics-identity/dkaplanpaper.htm> (accessed 8 September 2013).

disability is understood and experienced as oppression by social structures and practices.<sup>9</sup> On its part, the major law that address disability at an international level, the CRPD,<sup>10</sup> states that disability is an evolving concept that arises from the interaction between persons with impairments and attitudinal and environmental barriers that hinders their full participation in society on an equal basis with others.<sup>11</sup> The CRPD further states that;

‘[p]ersons 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.’<sup>12</sup> Furthermore, the CRPD states that disability is an evolving concept that arises from the interaction between persons with impairments and attitudinal and environmental barriers that hinders their full participation in society on an equal basis with others.<sup>13</sup>

It follows then that CWDs include those with long-term physical, mental, intellectual and sensory impairments who cannot fully and effectively participate at an equal level with their non-disabled counterparts due to various environmental and societal barriers.

The various attempts to define disability led to the development of different models of disability of which the three major ones are the medical, social and human rights models.

## **2.1 Models of Disability**

### **2.1.1 Medical Model**

The medical model views persons with disabilities as ill, different from non-disabled peers and in need of medical care. This model focuses on the person’s specific impairments. It locates the disability within the person and views persons with disabilities as objects for clinical intervention

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<sup>9</sup> R Kayess & P French ‘Out of darkness into light? Introducing the Convention on the Rights of Persons with Disabilities’ (2008) 8 *Human Rights Law Review* 15.

<sup>10</sup> The United Nations Convention on the Rights of Persons with Disabilities was adopted by the United Nations General Assembly on 13 December 2006 and entered into force on 3 May 2008. However, Zimbabwe is still not a signatory.

<sup>11</sup> CRPD Preamble, paragraph e.

<sup>12</sup> Art 1 of the CRPD.

<sup>13</sup> CRPD Preamble, paragraph e.

as opposed to subjects with human rights.<sup>14</sup> There is encouragement of charity for the biological ‘defect’ and the inability to function in mainstream society and to provide for oneself.<sup>15</sup>

### **2.1.2 Social Model**

Under this model, the problem with disability is not in persons with impairments but arises from attitudinal, physical and institutional barriers that systematically exclude them from fully participating in society.<sup>16</sup> Disability therefore arises from the interplay between persons with impairments and inaccessible environments plus negative attitudes. In simple terms, it is the physical and social environments that disable people and have to be changed.

### **2.1.3 Human Rights Model**

The model is premised on the understanding that persons with disabilities are human rights bearers and have equal obligations in the same manner as their non-disabled counterparts. This model emphasises the importance of defining the rights of persons with disabilities and the translation of such rights from paper into actual tangible realities.<sup>17</sup> The state is therefore under an obligation to tackle socially created obstacles in order to pave way for the full and effective enjoyment of human rights by persons with disabilities.<sup>18</sup> Resultantly, there is an inextricable link between the social and the human rights models of disability.

## **3. APPROACHES TO EDUCATION FOR CWDs**

According to World Health Organisation and World Bank, there are three approaches to education for CWDs, namely, special schools, integrated schools and inclusive schools approaches.<sup>19</sup>

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<sup>14</sup> G Quinn & T Degener *Human rights and disability: The current use and future potential of the United Nations human rights instruments in the context of disability* (2002) 10.

<sup>15</sup> C Ngweni ‘Deconstructing the definition of disability under the Employment Equity Act: Social deconstruction’ (2006) 22 *South African Journal on Human Rights* 620.

<sup>16</sup> Lang & Charowa above.

<sup>17</sup> H Combrinck ‘The hidden ones: Children with disabilities in Africa and the right to education’ in J Sloth-Nielsen (ed) (2008) *Children’s rights in Africa: A legal perspective* 299.

<sup>18</sup> Quinn & Degener above, 10.

<sup>19</sup> WHO & World Bank above 10.

### 3.1. Special Schools Approach

The approach refers to the provision of education to CWDs in a different environment separated from other children.<sup>20</sup> The underlying perception is that impairments in CWDs are the causes of the challenges they face in the mainstream schools. The approach focuses on CWDs and their impairments. As result, specialised and segregated schools have to be provided for CWDs. This approach is rooted in the above-mentioned medical model of disability.<sup>21</sup>

### 3.2 Integrated Schools Approach

Similarly to the Special Schools Approach, the Integrated Schools Approach focuses on CWDs and views their impairments as a cause of the barriers they face in education. However, instead of putting CWDs in segregated learning environments, measures are taken to make the children fit into the mainstream schools.<sup>22</sup> It can take many forms for example teaching of CWDs together with their non-disabled counterparts for several hours per week,<sup>23</sup> small units attached to the mainstream school and the teaching of CWDs with specialised techniques and the provision of special teachers.<sup>24</sup> In the end, CWDs are expected to fit into the mainstream schools without adjustment to the education system and the mainstream learning environment.<sup>25</sup> Rieser made an observation that the Integrated Schools Approach fails CWDs in that their ability to attain education depends on whether or not they fit into the mainstream schools.<sup>26</sup>

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<sup>20</sup> S Nock 'Implementing inclusive education: A Commonwealth guide to implementing Article 24 of the United Nations Convention on the Rights of Persons with Disabilities' (2011) 21 *Development in Practice* 447-448.

<sup>21</sup> Combrinck above, 304

<sup>22</sup> R Rieser *Implementing inclusive education* (2008) 21.

<sup>23</sup> J Balescut & K Eklindh (2005) 'Literacy and Persons with Developmental Disabilities: Why and How,' Paper commissioned for the *EFA Global Monitoring Report 2006, Literacy for Life*, Reference Number 2006/ED/EFA/MRT/PI/9.

<sup>24</sup> Combrinck above, 304.

<sup>25</sup> E Chilemba 'A critical appraisal of the right to primary education of children with disabilities in Malawi' (2011) Unpublished Thesis, University of Pretoria 12.

<sup>26</sup> Rieser above, 28.

### **3.3 Inclusive Schools Approach**

Under this approach, CWDs and their non-disabled counterparts learn together in the same mainstream schools.<sup>27</sup> Emphasis is placed on the need to change the school environment and its barriers as opposed to change CWDs. According to UNESCO, the impediments in the mainstream schools are the causes of the challenges faced by CWDs in accessing education.<sup>28</sup> The approach therefore aims at the identification and the eradication of obstacles to enable all children to attain education in the same mainstream schools and at an equal basis. Furthermore, appropriate support should be provided to enable CWDs to access learning for example Braille or sign language interpretation.<sup>29</sup>

Put in other words, the Inclusive Schools Approach is premised on the conviction that ‘the system should be changed to fit the child, not vice versa.’ Inclusive education is therefore a process of responding to the diversity needs of learners through increasing participation in learning and reducing exclusion. The ultimate goal is that schools accommodate all children in spite of their differences.<sup>30</sup> This approach embraces both the social and human rights models of disability through advocating for the change of the schools environments and education system aimed at full and effective realisation of the right to education for CWDs.

Under the CRPD, inclusive education for CWDs is explicitly provided for in terms of Article 24(1) which obliges parties to ensure inclusive education system at all levels and life-long learning. However, as noted above, Zimbabwe is not yet a ratifying party to the CRPD. Nonetheless, Zimbabwe has international obligations with regards to the realisation of the right to education for CWDs.

## **4. ZIMBABWE’S INTERNATIONAL OBLIGATIONS**

Zimbabwe is a party to a number of international human rights instruments which guarantees the right to education for CWDs and these include the CESC, the CRC, the African Charter and

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<sup>27</sup> S Peters *et al* ‘A disability rights in education model for evaluating inclusive education’ (2005) 9 *International Journal of Inclusive Education* 142.

<sup>28</sup> UNESCO (2001) *Open file on inclusive education* 22.

<sup>29</sup> Combrinck above, 305.

<sup>30</sup> Rieser above 2.

ACRWC. All these instruments guarantee the right to education, which right also include the right to inclusive education for CWDs. Zimbabwe therefore has an obligation to fulfil the right to inclusive education for CWDs.

#### **4.1 The CESC**

The CESC is the major instrument that guarantees social and economic rights, sometimes referred to as second generation rights. The right to education for all is guaranteed under Article 13. The provision further guarantees free and compulsory primary education.<sup>31</sup> Although there is no mention of the constituent elements of the right to education in the CESC, guidance can be taken from the General Comments by the Committee on Economic, Social and Cultural Rights (the Committee).<sup>32</sup> In terms of General Comment No. 13, the Committee emphasised that all children have the right to free and compulsory basic education. Furthermore, the right to education entails education which must be available, accessible, acceptable and adaptable.<sup>33</sup>

It can then be asserted that for CWDs, inclusive education is the best approach to ensure that education is available, accessible, acceptable and adaptable in Zimbabwe. It is only thorough inclusive education that CWDs can realise their right to education fully, effectively and at an equal level with others. In that regard, Zimbabwe is equally bound to ensure the effective realisation of the right to inclusive education for CWDs.

#### **4.2 The CRC**

The CRC is the first international instrument to address the concept of disability.<sup>34</sup> Article 23 is a dedicated provision on disability and Article 2 prohibits discrimination on the basis of disability. In addition, the CRC obliges states parties to ensure the provision of free special care and assistance to CWDs so as to enable them to access education, among other fundamental entitlements.<sup>35</sup> It also obliges states to provide free and compulsory primary education to all children on the basis of equal opportunity.<sup>36</sup> According to General Comment No.9 by the

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<sup>31</sup> Article 17(3).

<sup>32</sup> The Committee monitors the implementation of the CESC.

<sup>33</sup> General Comment No. 1, paragraph 6.

<sup>34</sup> Kil Kelly above 119.

<sup>35</sup> Article 23.

<sup>36</sup> Article 28.



Committee on the Rights of the Child,<sup>37</sup> the CRC expects inclusive primary education that is flexible to accommodate CWDs.<sup>38</sup> In the same vein, Zimbabwe therefore has an international obligation to embrace inclusive education for CWDs.

### **4.3 The African Charter**

The African Charter is a very important human rights instrument with regards to the promotion, protection and fulfilment of human rights in Africa. It is a composite instrument in that it contains different generations of human rights. Among other rights, the African Charter provides that ‘every individual shall have the right to education.’<sup>39</sup> It is clear that the Charter guarantees CWDs the right to education notwithstanding the fact that not much guidance can be formed as to the approach of the education advocated for. However, given that inclusive education is the best approach to education of CWDs, one can equally argue that inclusive education can still be read in to the provisions of the African Charter.

### **4.4 The ACRWC**

Children’s rights in Africa are provided for under the ACRWC. Just like the CRC, the ACRWC contains a dedicated section on CWDs. Article 13 provides that children with mental or physical disabilities have the right to special measures of protection in keeping with their physical and moral needs, and under conditions which ensure dignity, promote self-reliance and active participation in the community. On its part, Article 11 provides that every child has the right to education. States parties are also obliged to provide free and compulsory basic education.<sup>40</sup> According to General Comment No. 13 by the Committee on Economic, Social and Cultural Rights, the term ‘basic education’ includes primary education. Zimbabwe therefore has an international obligation to put in place a conducive environment for the full and effective realisation of the right to inclusive education by CWDs.

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<sup>37</sup> This Committee monitors the implementation of the CRC.

<sup>38</sup> See also Article 29(1)(a).

<sup>39</sup> Article 17(1).

<sup>40</sup> Article 11(3)(a).

## **5. BRIEF APPRAISAL OF THE NATIONAL LAWS**

The Constitution of Zimbabwe,<sup>41</sup> the Disabled Persons Act [Chapter 17:01]<sup>42</sup> and the Education Act [Chapter 25:04]<sup>43</sup> are some of the laws that address the right to education.

### **5.1 The Constitution**

For the first time in the constitutional history of Zimbabwe, the Constitution now contains a dedicated section on the rights of PWDs. Section 83 of the Constitution provides that the state must take appropriate measures, within the limits of the resources available to it, to ensure that persons with disabilities are provided with special facilities for their education and are provided with State-funded education and training where they need it.<sup>44</sup>

Notwithstanding that Zimbabwe is moving towards a human rights-based approach, it can be submitted that the provision on special facilities for the education of persons with disabilities is still aligned to the medical model of disability. Thus, the Constitution does not do enough to move away from a ‘special schools approach’ so as to clearly embrace inclusive education for CWDs. The Constitution therefore is of little assistance to CWDs with regards to the realization of their right to inclusive education.

### **5.2 The Disabled Persons Act**

This is the major law that addresses disability in Zimbabwe. However, the Disabled Persons Act is not a human rights document in that it does not confer any rights to persons with disabilities or confer any obligations on the state. The Disabled Persons Act also follows the outdated medical model of disability in all its provisions.

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<sup>41</sup> The new Constitution was adopted through a referendum held in April 2013. It received presidential assent on 22 May 2013. However, only some sections of the Constitution came into force on the day of presidential assent including the Bill of Rights in chapter 4 and a provision on elections in chapter 7. The Constitution as a whole document came into force on 22 August 2013.

<sup>42</sup> Act 5 of 1992.

<sup>43</sup> Act 5 of 1987.

<sup>44</sup> Section 83(e) & (f).

With regards to education of CWDs, the Disabled Persons Act mandates the National Disability Board<sup>45</sup> to formulate and develop measures and policies designed to achieve equal opportunities for disabled persons by ensuring that they obtain education and employment, among other functions.<sup>46</sup> It can be submitted that the Disabled Person Act only contains paper provisions as the Government has done little to ensure effective implementation of this law.

### **5.3 The Education Act**

The Act is the primary law that addresses education for all learners in Zimbabwe. From a human rights standpoint, the Act is commendable in that it confers a right to education for all children. Section 4 provides for a fundamental right to school education for all children. Further, the Act confers a state obligation to ensure free and compulsory primary education by stating that;

It is the objective in Zimbabwe that primary education for every child of school-going age shall be compulsory and to this end it shall be the duty of the parents of any such child to ensure that such child attends primary school.<sup>47</sup>

To a large extent, the Act is commendable in that it reinforces Zimbabwe's international obligation with regard to compulsory primary education. However, the Act does not do enough in relation to free and inclusive primary education for CWDs. The major weakness of the Act therefore appears to be its silence on the right to free and inclusive education for CWDs.

## **6. CONCLUSION**

Zimbabwe still has a long way to go with regard to full and effective realisation of the right to inclusive education for CWDs. The bulk of the laws are still tilted in favour of the medical approach to disability, which approach views persons with disabilities not as right holders but as objects for clinical intervention. The medical approach to disability has a negative bearing on the realisation of the rights of persons with disabilities, especially the right to education for CWDs.

Although inclusive education has been actively considered since 1994, there is still a lot to be achieved. School environments and educators need to adapt to the inclusive schools approach for education of CWDs. The Constitution and other laws that address education and CWDs need to

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<sup>45</sup> A Board established in terms of Section 4 of the Disabled Persons Act.

<sup>46</sup> Section 5(1).

<sup>47</sup> Section 5.

explicitly provide for the right to free and compulsory inclusive primary education. Furthermore, Zimbabwe has to be a party to the CRPD given the position that the Convention embodies the best practices for the realisation of the right to inclusive education for CWDs.

It is high time for Zimbabwe to be reminded that all children have something to contribute towards humanity and that schools should be built inclusively with children empowerment as a key goal. CWDs are equal members of society who have to be treated as equal rights bearers always.

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