

***DESK REVIEW OF THE LEGAL AND REGULATORY FRAMEWORK OF EAC  
COUNTRIES AND COMPLIANCE WITH THE CONVENTION ON THE RIGHTS  
OF PERSONS WITH DISABILITIES***

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**NORDIC TRUST FUND: IMPLEMENTING THE RIGHT TO EDUCATION THROUGH  
THE CONVENTION ON RIGHTS OF PERSONS WITH DISABILITIES**

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## **LIST OF ABBREVIATIONS AND ACRONYMS**

<b>CRC</b>	Convention on the Rights of the Child
<b>CRPD</b>	Convention on the Rights of Persons with Disabilities
<b>DPOs</b>	Disabled Peoples Organizations
<b>EAC</b>	East African Community
<b>EARCs</b>	Educational Training, Assessment and Resource Centres
<b>EFA</b>	Education For All
<b>ERSWC</b>	Government of Kenya Economic Recovery Strategy for Wealth and Employment Creation
<b>HI</b>	Handicap International
<b>IDPs</b>	Internal Displaced Persons
<b>KNHCR</b>	Kenya National Commission on Human Rights
<b>KNCPWD</b>	Kenyan National Council for Persons with Disability
<b>MDGs</b>	Millennium Development Goals
<b>MOE</b>	Ministry of Education
<b>NGOs</b>	Non-Governmental Organizations
<b>PTSD</b>	Post Traumatic Stress Disorder
<b>SNE</b>	Special Needs Education
<b>UNICEF</b>	United Nations Children's Fund

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## Executive Summary

This Desk Review provides an overview of the legal and regulatory framework of East African Community countries in the area of education for persons with disabilities and analyzes compliance with the obligations pertaining to education in the Convention on the Rights of Persons with Disabilities.

Inclusive education as it is defined and elaborated in the CRPD is a specific substantive right that connects to the realization of all other substantive rights in the treaty – civil, political, economic, social and cultural. Article 24 of the CRPD, on education, applies to all levels (i.e. primary, secondary and higher education) and requires the observance of non-discrimination on the basis of disability and, crucially, the application of reasonable accommodation. The requirements of the CRPD include ensuring that the educational system is: (1) open and accessible to children and other learners with disabilities; (2) addressing systemic barriers (e.g., law, policy and institutional) and requiring schools systems to accommodate the diversity and difference of disability.

The implementation of inclusive education consistent the CRPD is a process that requires action at national, regional and local levels and also action in schools and classrooms. Critical to the development of an effective plan to implement inclusive education is the identification of barriers within a given country context at all levels and solutions specifically tailored to the context.

**Part I** of the Desk Review provides an overview of the international legal framework supporting the right to inclusive education for persons with disabilities under the CRPD. **Part II** reviews the existing African regional framework for addressing the rights of persons with disabilities to education. **Part III** provides an overview of the law, policy and institutional frameworks for each EAC country – Burundi, Kenya, Rwanda, Tanzania and Uganda - with particular attention to the implementation of the right to inclusive education for persons with disabilities consistent with the CRPD. Each country review is followed by a short set of recommendations. **Part IV**, includes conclusions and recommendations that lay out a roadmap for progress in developing the legislative, policy and institutional frameworks necessary to support the right to education for persons with disabilities. A summary of these recommendations follows:

- Ratification of the CRPD, with timely and detailed reporting on Article 24(3) to the CRPD Committee.
- Review of legislative framework to assess compliance with CRPD requirements on achieving the right to education for persons with disabilities.
- Coordination of all actors dealing with disability issues. Responsibility for coordination of inclusive education should remain within a single ministry.
- Coordination among all stakeholders, governmental as well as DPOs, research institutes, and other NGOs should be improved in order to promote coherency and consistency in regulations, policy, and monitoring mechanisms that reflect the goals of inclusion of PWD.
- Allocation of resources to inclusive education. Funding must be directed towards inclusive education goals; and the receipt of funding to schools should be linked to

implementation of inclusive education practices and enrollment, completion, and employment outcomes for students with disabilities.

- Allocation of resources for improving physical accessibility of all schools.
- Ensuring new school accessibility.
- Allocation of resources for improving information accessibility within all schools.
- Allocation of resources for improving public transportation accessibility.
- Introducing accurate data gathering on disability and the education of persons with disabilities.
- Designation of Article 33(1) entity to ensure coordination of disability rights matters, including the coordination of education matters.
- Designation of Article 33(2) body to undertake independent monitoring of CRPD implementation, including implementation of Article 24.
- Inclusion of persons with disabilities through their representative organizations, consistent with Article 33(3) in monitoring the implementation of Article 24.
- Access to justice to protect the right to inclusive education.

## INTRODUCTION

The East African Community (EAC) is a regional intergovernmental organization comprised of the Republics of Burundi, Kenya, Rwanda, Uganda, and the United Republic of Tanzania.<sup>1</sup> The treaty establishing the EAC broadly outlines the need for collaboration amongst the five member countries to, *inter alia*, put in place education and training programs for persons with “special needs”- (i.e. persons with disabilities) – under Article 120(c), among other disadvantaged groups. In addition, each of the countries includes provisions within their respective constitutional frameworks that prohibit discrimination on the basis of disability. (See Part III). More recently, steps have been taken to develop an EAC-wide policy on persons with disabilities.

Each EAC country has laws and policies that promote education for children with disabilities, but the extent to which the laws and policies are applied and enforced is inconsistent. (See Part III) The EAC has included in the 4th EAC Development Strategy (2011-2016)<sup>2</sup> a provision regarding the need to mainstream disability using the framework provided in the Convention on the Rights of Persons with Disabilities (**Convention** or **CRPD**).<sup>3</sup>

Four out of five members of the EAC have signed and ratified the CRPD, and the fifth, the Republic of Burundi, has signed but not ratified the Convention. The CRPD is a legally binding, *core* human rights convention – so designated by the Office of the High Commissioner for Human Rights (OHCHR) on account of its international (as well as national)

**Table 1: International Standards and Instruments Supporting Education for Children with Disabilities**

- Universal Declaration of Human Rights (1948)
- International Covenant on Economic, Social and Cultural Rights (1966)
- Convention on the Rights of the Child (1989)
- Convention on the Rights of Persons with Disabilities (2006)

monitoring mechanism. As a core convention, the four EAC countries that have ratified the CRPD must submit, within two years of ratification, a report to the CRPD Committee outlining measures taken to comply with the obligations of the Convention, and, significantly, respond to the specific reporting guidelines on education, among other issues. Accordingly, this Desk Review concerning inclusive education for children with disabilities in the EAC uses the CRPD as the primary benchmark against which to assess current law and policy frameworks of the EAC and make recommendations.

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<sup>1</sup> The Treaty for Establishment of the East African Community was signed on 30th November 1999 and entered into force on 7th July 2000 following its ratification by the Original 3 Partner States – Kenya, Uganda and Tanzania. The Republic of Rwanda and the Republic of Burundi acceded to the EAC Treaty on 18th June 2007 and became full Members of the Community with effect from 1st July 2007.

<sup>2</sup> *EAC Conference on Persons with Disabilities Draws to a Close*, Feb. 20, 2010, [http://www.eac.int/index.php/eac-tenders/cat\\_view/services/index.php?option=com\\_content&view=article&id=381:pwd-conference-ends&catid=1:latest-news&Itemid=194](http://www.eac.int/index.php/eac-tenders/cat_view/services/index.php?option=com_content&view=article&id=381:pwd-conference-ends&catid=1:latest-news&Itemid=194)

<sup>3</sup> See Convention on the Rights of Persons with Disabilities, G.A. Res 61/106, U.N. DOC A/RES/61/106 (Dec. 13, 2006) [hereinafter CRPD]. See also Optional Protocol to the Convention on the Rights of Persons with Disabilities, G.A. Res. 61/106, Annex II, U.N. DOC A/RES/61/106 (Jan. 24, 2007) [hereinafter Optional Protocol].

## ***Purpose and Methodology of Review***

The purpose of this Desk Review is to provide a comprehensive overview of the legal framework concerning inclusive education for children with disabilities in the EAC. Significant attention will be given to the analysis of the specific obligations in Article 24 of the CRPD, the substantive provision that addresses education, and reflects the clear shift in favor of inclusive education in the Convention. This emphasis is warranted given the rapid rate of ratification of the CRPD within the EAC and in the light of the fact that treaty reporting under the CRPD is well underway for ratifying States, of which education is a core concern of the CRPD Committee, the body that monitors implementation of the CRPD.

Inclusive education as it is defined and elaborated in the CRPD is a specific substantive right that connects to the realization of all other substantive rights in the treaty – civil, political, economic, social and cultural. In addition to focusing on primary education, it applies its focus to all levels (i.e. primary, secondary and higher education) and requires the observance of non-discrimination on the basis of disability and, crucially, the application of reasonable accommodation. The requirements of the CRPD include ensuring that the educational system is: (1) open and accessible to children and other learners with disabilities; (2) addressing systemic barriers (e.g., law, policy and institutional) and requiring schools systems to accommodate the diversity and difference of disability. As such, realizing the right to inclusive education in country-specific contexts entails undertaking an assessment of each of the EAC governments' domestic and international obligations.

## ***Assessing the Situation of Children with Disabilities in Education: A Contextual Overview***

The right to education for persons with disabilities is a substantive right set forth in the CRPD and reflected in a host of other international as well as regional instruments. Throughout the world, including in developed and developing countries, persons with disabilities are often excluded from education on the basis of disability, or have limited access to quality education. According to the *World Report on Disability*, children with disabilities receive a substantially reduced rate of education in comparison to their non-disabled peers.<sup>4</sup> A 2007 Report by the Special Rapporteur on the Right to Education emphasized that “persons with disabilities, of both genders and of all ages and in most parts of the world, suffer from a pervasive and disproportionate denial of [the] right [to education].”<sup>5</sup> While the net enrolment rate in primary education in developing countries has seen an increase, to around 86 per cent over all regions, the estimated number of children with disabilities attending school in developing countries stands at less than 1 percent to 5 percent.<sup>6</sup>

Many children with disabilities throughout the world have been – and continue to be - excluded from mainstream educational opportunities or denied the right to education. In some

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<sup>4</sup> World Health Organization & World Bank, *World Report on Disability* 206 (2011): [http://whqlibdoc.who.int/publications/2011/9789240685215\\_eng.pdf](http://whqlibdoc.who.int/publications/2011/9789240685215_eng.pdf)

<sup>5</sup> Special Rapporteur on the Right to Education, Report on the Right to Education of Persons with Disabilities. A/HRC/4/29 (12 Feb. 2007).

<sup>6</sup> *Id.* at para. 8.

countries, negative attitudes about placing children with disabilities in the general classroom have resulted in segregated schools for children with disabilities, while in other countries the lack of disability awareness and financial resources is the main cause of exclusion. The *World Report on Disability* indicated that some progress has been made in recent decades, but still predominantly found that “children and youth with disabilities are less likely to start school or attend school than other children. They also have lower transition rates to higher levels of education.”<sup>7</sup> Even where children with disabilities attend general education schools, they often do not receive adequate or appropriate reasonable accommodations to support equality, access, and full participation in school.

The *World Report on Disability* outlines four principal reasons for ensuring that children with disabilities do have access to education, namely: (1) education contributes to personal well being and contributes to human capital formation; (2) high economic and social costs are attributed to the exclusion of children with disabilities from educational as well as employment opportunities; (3) States will be unable to achieve the Education for All or the Millennium Development Goals without including children with disabilities in education; (4) States are legally obliged to include children with disabilities in education under international human rights law.<sup>8</sup> Under the CRPD, States Parties are now legally bound to provide persons with disabilities the opportunity and support they need, without discrimination, to access quality, lifelong education in an inclusive education setting.

### ***Multiple Barriers to Education for Children with Disabilities***

The many barriers experienced by persons with disabilities in accessing their right to education are generally broken down into two broad categories: (1) Systemic barriers, encompassing law, policy and institutional barriers; and (2) school-centred barriers, encompassing attitudinal, pedagogical, physical, communication, economic and other barriers.<sup>9</sup> (See Table 2).

Historically, the exclusion of children with disabilities from education was rooted in false assumptions about their ability to benefit from and effectively participate in education. Attitudinal barriers persist in all societies and continue to hamper the effective inclusion of persons with disabilities in education on account of attitudes among teacher and school administrators, parents, and peers.<sup>10</sup>

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<sup>7</sup> World Report on Disability, *supra* note 4 at p. 208.

<sup>8</sup> *Id.* at p. 205.

<sup>9</sup> *Id.* at p.212.

<sup>10</sup> J. Balescut and K. Eklindh, *Literacy and Persons with Developmental Disabilities: Why and How EFA*, Global Monitoring Report. Literacy for Life, Ref. Np. 2006/ED/EFA/MRT/PI/9.



**Table 2: Common Barriers to Education for Children with Disabilities**

- Disability stigma and cultural attitudes about disability, sometimes manifested in belief about disability as a curse or punishment;
- Negative attitudes of teachers, school administrators, parents, and peers about the ability of persons with disabilities to learn and actively participate in education;
- Legislation and policy that explicitly excludes persons with disabilities from education systems;
- Lack of legislation and policy that promotes inclusive education;
- Lack of adequate funding to promote inclusive education;
- Lack of accessible transportation to educational facilities;
- Lack of materials in accessible formats, such as large print, Braille, plain language, or visual representations of verbal information;
- Lack of alternate forms of communication, such as sign language or Communication Access Realtime Translation (CART), or facilitated communication; and
- Lack of teacher-training on inclusive education, resulting in a shortage of qualified teachers and support staff.

Sources: World Health Organization & World Bank, *World Report on Disability* (2011); Janet E. Lord et al., *Human Rights. Yes! Action and advocacy on the rights of persons with disabilities* (2012).

## **PART 1 – INTERNATIONAL AND COMPARATIVE LAW AND POLICY FRAMEWORK SUPPORTING THE RIGHT TO EDUCATION FOR PERSONS WITH DISABILITIES**

The adoption of the CRPD represents the culmination of a progressive development of an international framework protecting the right of persons with disabilities to education. The right to education has evolved in human rights law from a general guarantee set forth in the Universal Declaration on Human Rights (UDHR)<sup>11</sup> to a more detailed articulation of the right to education in the International Covenant on Economic, Social and Cultural Rights (ICESCR).<sup>12</sup> (See Table 3) The sub-sections that follow outline the essential elements of the right to education for persons with disabilities in human rights law.

### ***Introduction to the Right to Inclusive Education for Persons with Disabilities***

The progressive development of the right to education in human rights law began with the adoption of the UDHR in 1948,<sup>13</sup> a non-binding instrument at the time that has, however, acquired the status of customary international law. The right to education was further expressed in the 1960 UNSECO Convention against Discrimination in Education<sup>14</sup> and the ICESCR in 1966,<sup>15</sup> which recognizes the right of everyone to free and compulsory primary education and the right to free secondary and higher education, to be achieved progressively. This right was reaffirmed in the Convention on the Rights of the Child in 1989.<sup>16</sup>

Successive international instruments began to apply the right to education more specifically to the needs of persons with disabilities and, over time, articulated the link between inclusive education and the right to education for persons with disabilities. Thus, for example, the Salamanca Statement on Principles, Policies and Practice in Special Needs Education of UNESCO in 1994<sup>17</sup> asserted that education for all must encompass the inclusion of all types of learners in a single learning environment. Paragraph 2 of the Statement provides that “regular

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<sup>11</sup> Universal Declaration of Human Rights, G.A. Res. 217 (III)A, U.N. Doc. A/RES/217(III), (Dec. 10, 1948) [hereinafter UDHR].

<sup>12</sup> International Covenant on Economic, Social and Cultural Rights, G.A. Res. 2200A (XXI), U.N. GAOR, Supp. No. 16, U.N. Doc. A/6316 (1966) [hereinafter ICESCR].

<sup>13</sup> UDHR, *supra* note 11 at art.26(2).

<sup>14</sup> UNESCO Convention against Discrimination in Education, 429 U.N.T.S. 93, *entered into force* May 22, 1962.

<sup>15</sup> ICESCR, *supra* note 12 at art. 13.

<sup>16</sup> Convention on the Rights of the Child, 20 Nov. 1989, 1577 U.N.T.S. 3 1990 [hereinafter CRC], at arts. 29 and 23. 7-10 June 1994.

<sup>17</sup> UNESCO Salamanca Statement on Principles, Policies and Practice in Special Needs Education, World Conference on Special Needs Education: Access and Quality, 7-10 June 1994, Salamanca, Spain, [http://www.unesco.org/pv\\_obj\\_cache/pv\\_obj\\_id\\_8678C38B771FE2B34D07C1D03C94529011180300/filename/SALAMA\\_E.PDF](http://www.unesco.org/pv_obj_cache/pv_obj_id_8678C38B771FE2B34D07C1D03C94529011180300/filename/SALAMA_E.PDF)

**Table 3: Foundational Standards on the Rights to Education in International Human Rights Law**

**Universal Declaration on Human Rights - Article 26**

(1) Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit.

(2) Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace.

(3) Parents have a prior right to choose the kind of education that shall be given to their children

**International Covenant on Economic, Social and Cultural Rights – Article 13**

1. The States parties to the present Covenant recognize 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.

2. The States parties to the present Covenant recognize that, with a view to achieving the full realization of this right:

- (a) Primary education shall be compulsory and available free to all;
- (b) Secondary education in its different forms, including technical and vocational secondary education, shall be made generally available and accessible to all by every appropriate means, and in particular by the progressive introduction of free education;
- (c) Higher education shall be made equally accessible to all, on the basis of capacity, by every appropriate means, and in particular by the progressive introduction of free education;
- (d) Fundamental education shall be encouraged or intensified as far as possible for those persons who have not received or completed the whole period of their primary education;
- (e) The development of a system of schools at all levels shall be actively pursued, an adequate fellowship system shall be established, and the material conditions of teaching staff shall be continuously improved.

3. The States parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to choose for their children schools, other than those established by the public authorities, which conform to such minimum educational standards as may be laid down or approved by the State and to ensure the religious and moral education of their children in conformity with their own convictions.

4. No part of this article shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject always to the observance of the principles set forth in paragraph I of this article and to the requirement that the education given in such institutions shall conform to such minimum standards as may be laid down by the State.

schools with this inclusive orientation are the most effective means of combating discriminatory attitudes, creating welcoming environments, building an inclusive society and achieving education for all.”<sup>18</sup>

### The CRPD: An Overview

The CRPD’s twenty-five preambular paragraphs and fifty articles provide a legally binding framework within which disability rights, including the right to inclusive education, may be addressed within the EAC.<sup>19</sup> The aim of the drafters was not to create “new” or “special” rights for persons with disabilities, but instead to articulate how existing human rights obligations apply specifically to persons with disabilities.<sup>20</sup>

The CRPD structure consists of an introductory set of provisions that outline its purpose (Article 1) and key definitions (Article 2), along with articles of general or cross-cutting application (Articles 3-9). Among the obligations adumbrated in the instrument, States Parties must (i) adopt legislative, administrative and other measures to implement enumerated rights; (ii) abolish or amend existing laws, regulations, customs and practices that discriminate against persons with disabilities; and (iii) adopt an inclusive approach to protect and promote the rights of persons with disabilities in all policies and programmes. In relation to economic, social and cultural rights, States Parties must take measures to realize these rights progressively to the maximum extent of available resources.

The CRPD sets forth specific substantive rights covering civil, political, economic, social and cultural rights (Articles 10-30). During treaty negotiations, African government delegations and disability rights advocates pressed for a treaty that was comprehensive in its approach, encompassing civil, political, economic, social and cultural rights. They likewise insisted that the entrenched interrelationship between disability and poverty be reflected in the text, thereby contributing references to disability-inclusive poverty reduction programs and making explicit the right to an adequate standard of living.

The CRPD further establishes a system of monitoring and implementation (Articles 31-40) and includes final provisions that govern the treaty’s operation (Articles 41-50).

### The Right to Inclusive Education in the CRPD

Article 24 of the CRPD requires States Parties to ensure that persons with disabilities have access to an inclusive education system at all levels, as well as to lifelong learning opportunities, including to tertiary, vocational and adult education. Article 24 specifically requires States Parties to ensure the elimination of discrimination on the ground of disability from all aspects of education. Notably, it also requires States Parties to ensure that reasonable accommodation of impairment and disability related needs is provided at all levels of the

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<sup>18</sup> *Id.* at para. 2.

<sup>19</sup> For a discussion of the CRPD within an African context, see Michael A. Stein & Janet E. Lord, *Human Rights and Humanitarian Assistance for Refugees and Internally Displaced Persons with Disabilities*, in ASPECTS OF DISABILITY LAW IN AFRICA 31 (Ilze Grobbelaar-du Plessis & Tobias Van Reenen eds., 2011).

<sup>20</sup> For a comprehensive overview of the CRPD, see MA Stein & JE Lord, ‘Future prospects for the United Nations Convention on the Rights of Persons with Disabilities’ in OM Arnardóttir & G Quinn (eds) *The UN Convention on the Rights of Person with Disabilities: European and Scandinavian perspectives* (2008).

education system. Reasonable accommodation – the duty to provide necessary and appropriate modifications and adjustments that meet the individual’s requirements– is thus applicable to education both as a result of the general obligation of non-discrimination and equality in Article 5 and as an aspect of Article 24.

Reasonable accommodations might include, for example, providing large print materials for a child with low vision, sign language interpretation for a deaf child, or a teaching assistant for a child with a learning disability. Significantly, Article 24 requires States Parties to ensure that education is directed towards a number of fundamental goals, which include the development of human personality and potential, a sense of dignity and self-worth, respect for human rights, fundamental freedom and human diversity, and effective participation in a free society. The provision has a strong thrust towards the provision of inclusive education and requires States Parties to provide the individualized services, such as individualized educational plans, and supports necessary to facilitate inclusion.

Finally, Article 24 addresses the learning and social development needs of children and young persons with sensory disabilities. In this particular context, States Parties are required to facilitate the learning of Braille and other alternative modes, means and formats of communication, and orientation and mobility skills and are required to facilitate peer support and mentoring to assist children and young persons with sensory disabilities to develop a positive self-image and social networks. Children who are deaf or deafblind must be provided with the opportunity to learn sign languages, and the linguistic identity of the deaf community must be promoted. Educational instruction must be delivered in the most appropriate languages and modes and means of communication for the child with sensory disability, and in environments that maximize their academic and social development. In order to realize these rights, States Parties are required to ensure that teachers are employed who are qualified in sign language and/or Braille, and to provide training to ensure that all staff working in the education system are sensitive to the needs of persons with disabilities, and are able to effectively use augmentative and alternative communication, and adapt and use educational techniques and materials appropriate for children with disabilities.

### ***Normative Content of the Right to Inclusive Education for Persons with Disabilities***

The basic framework of governmental obligations is outlined by a series of legal guarantees comprising the right to inclusive education.<sup>21</sup> The essential role of the State is to set

**Table 4: 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.”

---Committee on Economic, Social and Cultural Rights, General Comment 13 (Right to education), 1999.

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<sup>21</sup> For leading commentary on the subject, see especially K. Tomasevski, *Preliminary report of the Special Rapporteur on the right to education*, 13 January 1999, E/CN.4/14999/49; K. Tomasevski, *Education Denied. Cost and Remedies* ( 2003); K. Tomasevski, *Human Rights Obligations in Education: The 4-A Scheme* ( 2006); F.

educational strategy, determine and enforce educational standards, monitor the implementation of the strategy and put in place corrective action where required. In addition to the principle of non-discrimination, the right to inclusive education encompasses general provisions on the aims and objectives of education, specific requirements in order to give effect to the right and measures to enhance access to inclusive education. These are reviewed in the sections that follow.

### *Aims and Objectives - Inclusion*

Article 26 (2) of the UDHR, together with Article 13 (1) of the ICESCR, provides that “education shall be directed to the full development of the human personality.”<sup>22</sup> Drawing from the right to education as set forth in human rights law generally, the aims and objectives of education also include imparting a sense of dignity and self-worth, respect for human rights, fundamental freedom and human diversity, and effective participation in a free society.<sup>23</sup> The CRPD animates these general aims and objectives within the specific context of disability. Article 24 of the CRPD has a strong thrust towards the provision of inclusive education and requires States parties to provide the individualized services, such as individualized educational plans, and supports necessary to facilitate inclusion.<sup>24</sup> The additional aims and objectives of education for persons with disabilities as set forth in Article 24 (1) of the CRPD and supplementing Article 13 of the Covenant include: (1) the full development of human potential and sense of dignity and self-worth; (2) strengthening of respect for human rights, fundamental freedoms and human diversity; (3) the development by persons with disabilities of their personality, talents and creativity, along with mental and physical abilities, to their fullest potential.

### *Essential Features of the Right to Education for Persons with Disabilities*

The CRPD defines the essential features of the right to education for persons with disabilities. Article 24 of the CRPD applies the right to education to persons with disabilities and requires States Parties to ensure that persons with disabilities have access to an inclusive education system at all levels, as well as to lifelong learning opportunities. Article 24 specifically requires States Parties to ensure the elimination of discrimination on the ground of disability from all aspects of education. The failure to provide reasonable accommodation of children with disabilities in the education system thus constitutes discrimination. Reasonable accommodation is an essential feature of the right to education for persons with disabilities and has already, in the early life of the CRPD Committee, been underscored in the context of State reporting.<sup>25</sup>

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Coomans, ‘In Search of the Core Content of the Right to Education’, in A. Chapman and S. Russell, eds., *Core Obligations: Building a Framework for Economic, Social and Cultural Rights* 217-246 (2002).

<sup>22</sup> See UDHR, *supra* note 11 at art. 26(2); ICESCR, *supra* note 12 at art. 13.

<sup>23</sup> A number of international instruments provide further elaboration on the aims and objectives of education. See, e.g., World Declaration on Education for All, Jomtien, Thailand, 1990, at art. 1, [http://www.unesco.org/education/pdf/JOMTIE\\_E.PDF](http://www.unesco.org/education/pdf/JOMTIE_E.PDF); CRC, *supra* note 16 at art. 29 (1); Vienna Declaration and Programme of Action, 25 June 1990, (Part I, para. 33 and Part II, para. 80, <http://www2.ohchr.org/english/law/vienna.htm>).

<sup>24</sup> CRPD, *supra* note 3 at art. 24.

<sup>25</sup> See Table 8, below.

**Table 5: Convention on the Rights of Persons with Disabilities - Article 24, Right to Education**

1. 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 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 disabilities of their personality, talents and creativity, as well as their mental and physical abilities, to their fullest potential;
  - (c) Enabling persons with disabilities to participate effectively in a free society.
2. In realizing this right, States parties shall ensure that:
  - (a) Persons with disabilities are not excluded from the general education system on the basis of disability, and that children with disabilities are not excluded from free and compulsory primary education, or from secondary education, on the basis of disability;
  - (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;
  - (d) Persons with disabilities receive the support required, within the general education system, to facilitate their effective education;
  - (e) Effective individualized support measures are provided in environments that maximize academic and social development, consistent with the goal of full inclusion.
3. States parties shall enable persons with disabilities to learn life and social development skills to facilitate their full and equal participation in education and as members of the community. To this end, States parties shall take appropriate measures, including:
  - (a) Facilitating the learning of Braille, alternative script, augmentative and alternative modes, means and formats of communication and orientation and mobility skills, and facilitating peer support and mentoring;
  - (b) Facilitating the learning of sign language and the promotion of the linguistic identity of the deaf community;
  - (c) Ensuring that the education of persons, and in particular children, who are blind, deaf or deafblind, is delivered in the most appropriate languages and modes and means of communication for the individual, and in environments which maximize academic and social development.
4. In order to help ensure the realization of this right, States parties shall take appropriate measures to employ teachers, including teachers with disabilities, who are qualified in sign language and/or Braille, and to train professionals and staff who work at all levels of education. Such training shall incorporate disability awareness and the use of appropriate augmentative and alternative modes, means and formats of communication, educational techniques and materials to support persons with disabilities.
5. States parties shall 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. To this end, States parties shall ensure that reasonable accommodation is provided to persons with disabilities.

### The I-4-A Analytical Framework for the Right to Inclusive Education

The application of the right to education in relation to persons with disabilities varies from state to state in accordance with country conditions. Human rights law makes clear that education in all its forms and at all levels must consist of several interrelated and essential features. These features are categorized in an analytical framework that draws together both general human rights law on the right to education and the specific attributes of the right to education as set forth in the CRPD. Thus, the familiar 4-A framework (ensuring the availability, accessibility, acceptability, and adaptability of education) developed by the Special Rapporteur on the Right to Education, is developed further to reflect the right to *inclusive education* as clearly enunciated in the CRPD:

Inclusive education: Inclusion in the context of education is based on the idea that all children should learn together, regardless of difference or disability.<sup>26</sup> Inclusive education begins with the premise that all learners have unique characteristics, interests, abilities and particular learning needs and, further, that learners with special education needs must have equal access to and receive individual accommodation in the general education system. Inclusive education approaches difference and diversity affirmatively, recognizing the value in such difference and the learning opportunities that such diversity offers. Inclusion implies transition from separate, segregated learning environments for persons with disabilities reflected in the “special education” approach. Effective transitions from special education approaches to inclusive education requires careful planning and structural changes to ensure that learners with disabilities are not placed within the regular or mainstream school system without the appropriate accommodations and supports that ensure an inclusive learning environment.. In sum, inclusive education requires all schools to be fully accessible, available, acceptable, and adaptable to persons with disabilities.

Accessibility: Educational institutions and programmes must be accessible to persons with disabilities, without discrimination, within the jurisdiction of the State party. Accessibility has three overlapping dimensions, including *non-discrimination together with reasonable accommodation; physical access; and economic access.*

Non-discrimination and reasonable accommodation in education requires that education be accessible to all persons, including the most vulnerable persons with disabilities, without discrimination on the basis of disability. Moreover, non-discrimination requires that persons with disabilities be accommodated in accessing their right to education at all levels. Reasonable accommodation is defined in the CRPD as “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.”<sup>27</sup>

Physical accessibility as applied to education means not only that schools must be within safe physical reach, they must be accessible for persons with disabilities, both in terms of getting

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<sup>26</sup> Salamanca Statement, *supra* note 17 at para. 3.

<sup>27</sup> CRPD, *supra* note 3 at art. 2.



to the school, and moving around within the school building and all facilities. Physical reach may mean access through attendance at some reasonably convenient geographic location (e.g. a neighborhood school) or, provided not used as a means of segregation, it could also mean access through modern technology (e.g. access to a "distance learning" programme provided by a university).

Education must be economically accessible in the sense that it must be affordable to persons with disabilities. International law requires that primary education be available "free to all," which must apply equally to students with disabilities. In the case of secondary and higher education, States Parties are required to achieve access on the basis of progressive realization.

Availability: The concept of availability in securing the right to education implies that functioning educational institutions and programmes for students with disabilities must be available in sufficient quantity within the jurisdiction of the State party. This is very frequently a problem in the context of education for students with disabilities who may need to travel to a distant urban area to find a school that is able to accommodate their needs.

Acceptability: The concept of acceptability as applied to the right to education relates both to the form *and* substance of education. The concept of inclusion recognizes the important role that socialization plays in the education of all children. As emphasized by the Special Rapporteur on the right to education, the realization that socialization is a key element of an acceptable education means that inclusiveness is highly prioritized over segregation. Other aspects of acceptability include choice of the language of instruction. For children with disabilities, this could include, for example, the provision of sign language. It could also encompass the provision of instructional materials in formats such as Braille or plan language/easy-to-read formats.

Curricula and teaching methods must be acceptable, not only in the sense of cultural appropriateness and good quality, but also, in the context of disability, curricula and teaching methods must be provided in the most appropriate languages and modes and means of communication for the individual student. This might include, for example, teaching in sign language for students who are deaf or providing educational materials in Braille or audio formats for persons who are blind..

Adaptability: Adaptation of education towards inclusion entails various strategies. The concept of adaptability as applied to education for persons with disabilities pertains to flexibility to meet the needs of students with disabilities. Education must be responsive to the needs of students with different kinds of disability, also taking into account diversity in terms of social and cultural contexts. Two aspects of adaptability are essential in order to meet the needs of students with disabilities. These include (1) the provision of reasonable accommodation to meet individual student needs; and (2) the provision of support within the general education system to facilitate education. Adaptability also relates to responding to the changing nature of education, towards inclusion, meaning recruitment of teachers with disabilities.

Finally, it should also be noted that the principle of the best interests of the child links to and interrelates with these foregoing dimensions (inclusion, accessibility, availability, acceptability and adaptability) and essential features of the right to education for children with disabilities. The section that follows reviews the specific obligations of States to make inclusive education effective for students with disabilities.

*Specific Obligations of States to Make the Right to Inclusive Education Effective for Persons with Disabilities*

**Table 6: The I-4-A Framework**

<p><i>Inclusion:</i> Is equal access to the general education system provided and do individuals requiring support receive reasonable accommodations?</p> <p><i>Availability:</i> Is inclusive education provided?</p> <p><i>Accessibility:</i> Are there physical, economic, and/or socio-cultural obstacles?</p> <p><i>Acceptability:</i> Is the content of education adequate or is it inferior?</p> <p><i>Adaptability:</i> Are the needs of persons with disabilities taken into account?</p>
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Article 24(2) and 24(5) of the CRPD addresses the specific obligations of States in order to give effect to the right of persons with disabilities to education:

*Prohibition Against Exclusion from the General Education System on the Basis of Disability.*

The right to inclusive education means that persons with disabilities may not be excluded from free and compulsory primary education, or from secondary education, on the basis of disability.

*Equal Access to Inclusive Education in the Community.*

The requirement of inclusive education in the CRPD mandates that quality and free primary education and secondary education on an equal basis with others in the communities in which they live.

*Obligation to Provide Reasonable Accommodation.*

Part of the non-discrimination mandate in the CRPD is the requirement of reasonable accommodation. Article 24 specifically requires that reasonable accommodation be provided in the context of education. The failure to provide reasonable accommodation in the context of education amounts to discrimination.

*Obligation to Provide Supports, Within the General Education System.*

Supports must facilitate effective education of persons with disabilities. “Warehousing” children with disabilities in the general education system without supports is impermissible.

*Equal access to inclusive tertiary education.*

Article 24(5) of the CRPD recognizes that education is a lifelong process and that adults with disabilities must have equal access to general tertiary education (e.g., college, university), vocational training, adult education and lifelong learning. Such access must be provided without discrimination on the basis of disability. Moreover, Article 24(5) reiterates the obligation to provide reasonable accommodation to persons with disabilities in these educational settings.

*Enabling life and social development skills to facilitate inclusive education and community membership*

Article 24(3) of the CRPD recognizes that life and social development skills are an essential aspect of education and that they are essential to ensure the full participation of students with disabilities both in education and in community life more generally. Specific measures required by Article 24 in fulfilling the obligation to provide life and social development skills include the following:

- Facilitating the learning of Braille, alternative script, augmentative and alternative modes, means and formats of communication and orientation and mobility skills;
- Facilitating peer support and mentoring;
- Facilitating the learning of sign language and the promotion of the linguistic identity of the deaf community;
- Delivering education - especially for children who are blind, deaf or deafblind - in the most appropriate languages and modes and means of communication for the individual, and in environments which maximize academic and social development.

#### *Enabling inclusive education*

Article 24(4) requires that States take appropriate measures to employ teachers, including teachers with disabilities, who are qualified in sign language and/or Braille, and to train professionals and staff who work at all levels of education. The provision further specifies that this type of training must incorporate disability awareness and the use of appropriate augmentative and alternative modes, means and formats of communication, educational techniques and materials to support persons with disabilities.

#### *Progressive realization and immediate obligations in respect of the right to inclusive education*

States are required to take steps with a view to achieving *progressively* the full realization of the right to inclusive education. The concept of progressive realization was clarified by the Committee on Economic, Social and Rights in its General Comment 3, stating that:

The concept of progressive realization constitutes recognition of the fact that full realization of all economic, social and cultural rights will generally not be able to be achieved in a short period of time. [...] Nevertheless, the fact that realization over time, or in other words progressively, is foreseen under the Covenant should not be misinterpreted as depriving the obligation of all meaningful content. [...] The Covenant [...] imposes an obligation to move as expeditiously and effectively as possible towards that goal. Moreover, any deliberately retrogressive measures in that regard would require the most careful consideration and would need to be fully justified by reference to the totality of the rights provided for in the Covenant and in the context of the full use of the maximum available resources.<sup>28</sup>

It is important to note that while the right to inclusive education is a right subject to progressive realization, some elements of the right have immediate effect, namely:

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<sup>28</sup> Committee on Economic, Social and Cultural Rights, General Comment 3, para. 9.

- The obligation not to discriminate in the exercise and enjoyment of the right to inclusive education, together with the obligation to ensure that reasonable accommodations are provided to facilitate inclusive education;
- The obligation for States to implement the right to education “to the maximum of [their] available resources” means that States must ensure that resources are being allocated to inclusive education and that due priority to the realization of the right to inclusive education is recognized in the Covenant;
- The obligation to pursue the full realization of the right to inclusive education “by all appropriate means” which means that while States have wide discretion in deciding what measures to take, a standard of “appropriateness” is established.

In addition, a State violates its obligations under the Covenant if it fails to put into place the minimum essential level required for inclusive education.

### ***Programmatic Commitments on the Right to Education***

The most significant of the programmatic frameworks that reflect the international commitment to inclusive education include the World Conference on Education for All, held in Jomtien, Thailand, in 1990, which set the now well-known goal of “education for all”, promoting equity and universal access to education. The Standard Rules on the Equalization of Opportunities for Persons with Disabilities, adopted 1993, focus on the “equalization of opportunities and participation in all aspects of society” for persons with disabilities, including in education. The Salamanca Statement on Principles, Policy and Practice in Special Needs Education of UNESCO followed in 1994, provides that that education for all cannot not be achieved without including all types of learners in one learning environment and, further, asserts that regular schools that are appropriately inclusive are the most effective means of combating discriminatory attitudes, creating welcoming communities, building an inclusive society and achieving education for all.” In 2000, World Education Forum was held in Dakar, Senegal, which reiterated the need to focus on access to education and inclusion for learners from marginalized backgrounds. The expanded commentary on the Dakar Framework for Action stresses that “education systems must be inclusive, actively seeking out children who are not enrolled, and responding flexibly to the circumstances and needs of all learners.”<sup>29</sup> In September 2006, the Committee on the Rights of the Child adopted its general comment No. 9 on the rights of children with disabilities. This general comment specifically views inclusive education as the goal of educating children with disabilities and indicates that States should aim at providing “schools with appropriate accommodation and individual support” for these persons.<sup>30</sup>

The foregoing international commitment to inclusive education for persons with disabilities is continuing to evolve, with the Committee on the Rights of Persons with Disabilities providing further texture and detail to the commitment and what it entails. (See Table 7).

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<sup>29</sup> Dakar Framework for Action, para. 33.

<sup>30</sup> Committee on the Rights of the Child, General comment No. 9 on the rights of children with disabilities (2006).

**Table 7: CRPD Committee Concluding Observations on Article 24**

**China:** The Committee is **concerned about the high number of special schools and the state party's policy of actively developing these schools.** The Committee is especially worried that in practice only students with certain kinds of impairments (physical disabilities or mild visual disabilities) are able to attend mainstream education, while all other children with disabilities are forced to either enter a special school or drop out altogether. The Committee wishes to remind the state party that **the concept of inclusion is one of the key notions of the CRPD** and should be especially adhered to in the field of education. In this regard, **the Committee recommends that the state party reallocate resources from the special education system to promote the inclusive education in mainstream schools,** so as to ensure that more children with disabilities can attend mainstream education.

**Hungary:** The Committee notes with appreciation that students with disabilities have the opportunity to study using sign language and the Braille system. It also notes that training in those subjects is provided to teachers. However, the Committee **regrets that many students with disabilities continue to attend special educational institutions.** It furthermore notes with concern that the State party has not taken sufficient steps to provide reasonable accommodation to all students with disabilities in mainstream educational facilities and to develop and promote an inclusive education system as defined by the Convention... The Committee calls upon the State party to allocate sufficient resources for the development of an inclusive education system for children with disabilities. It reiterates that denial of reasonable accommodation constitutes discrimination, and recommends the State party to significantly increase its efforts to: provide reasonable accommodation to children with disabilities based on the student's individual requirements; provide students with disabilities with required support within the general education system; and to continue training teachers and all other educational staff to enable them to work in inclusive educational settings.

**Spain:** The Committee takes note of the national programme of inclusive education for children with disabilities...[I]t **notes with deep concern that, in practice, the inclusion strategy is not equally implemented in schools; rules relating to the number of children in mainstream schools and to the management of inclusive classes are commonly breached;** and schools are not equitably distributed between regions of the same governorate. The Committee is equally concerned that **many integrated schools are not equipped to receive children with disabilities,** and that the **training of teachers and administrators with regard to disabilities remains a concern** in the State Party. The Committee recommends that the State party... **Increase its efforts to enforce inclusive education** for girls and boys with disabilities in all schools; **Intensify training for education personnel,** including teachers and administrators; **Allocate sufficient financial and human resources to implement the national programme of inclusive education** for children with disabilities.

**Tunisia:** The Committee welcomes the fact that the principle of inclusion governs the schooling of pupils with special educational needs; that discrimination in education is prohibited; and that most children with disabilities are included in the regular education system...[T]he Committee is concerned by the implementation of these laws in practice, in view of reported cases of failure to provide reasonable accommodation, of continued segregation and exclusion, of financial arguments used as justification for discrimination, and of the cases of children enrolled in special education against their parents' will. The Committee notes with concern that parents challenging the placement of their children with disabilities in special education have no possibility of appeal and that their only alternative is to educate them at their own expense or pay for the reasonable accommodation of their child in the regular education system. **The Committee reiterates that denial of reasonable accommodation constitutes discrimination and that the duty to provide reasonable accommodation is immediately applicable and not subject to progressive realization. It recommends that the State party: (a) Increase its efforts to provide reasonable accommodation in education, by: allocating sufficient financial and human resources to implement the right to inclusive education; paying particular attention to assessing the availability of teachers with specialist qualifications; and ensuring that educational departments of local governments understand their obligations under the Convention and act in conformity with its provisions; (b) Ensure that the decisions to place children with a disability in a special school or in special classes, or to offer them solely a reduced-standard curriculum, are taken in consultation with the parents; (c) Ensure that the parents of children with disabilities are not obliged to pay for the education or for the measures of reasonable accommodation in mainstream schools; (d) Ensure that decisions on placing children in segregated settings can be appealed swiftly and effectively.**

**Sources:** CRPD Committee, Concluding Observations on the Report of China, paras. 35& 36; CRPD Committee, Concluding Observations on the Report of Hungary, paras. 39-42; CRPD Committee, Concluding Observations on the Report of Spain, paras. 30-32; CRPD Committee, Concluding Observations on the Report of Tunisia, paras. 31-32. CRPD Concluding Observations may be accessed at: <http://www.ohchr.org/EN/HRBodies/CRPD/Pages/Sessions.aspx>

## **PART II - AFRICAN REGION: INSTITUTIONAL FRAMEWORK FOR THE RIGHT TO EDUCATION**

### ***Introduction***

The African region has a regional human rights system that sets out human rights within the context of the African continent. While no African regional instrument as yet addresses in any comprehensive way the rights of persons with disabilities to inclusive education, there are nonetheless several regional instruments and mechanisms that have, to some extent, focused on the right of persons with disabilities to education. Moreover, a new process to develop a regional human rights convention addressing disability is currently underway. The sections that follow provide a summary of these developments insofar as they provide a regional basis for dialogue and cooperation around the issue of inclusive education for persons with disabilities.

### ***Institutional Arrangements Supporting the Rights to Education for Persons with Disabilities in Africa***

The *Africa Regional Conference on the International Year of the Disabled Persons* was held in 1980, the outcome of which was the recommendation to establish the African Rehabilitation Institute (ARI).<sup>31</sup> In 1999, the OAU Ministerial Conference on Human Rights highlighted the situation of persons with disabilities in Africa and urged all African states to work towards ensuring the full respect of the rights of PWDs.<sup>32</sup> Soon thereafter, the OAU Labour and Social Affairs Commission (LSAC) held its 22nd Ordinary Session in Namibia during which the human rights challenges of persons formed part of the agenda and resulted in a recommendation that the period 1999–2009 be proclaimed as the African Decade of Disabled Persons. This recommendation was adopted in April 2000 by the LSAC and was subsequently endorsed by both the OAU Council of Ministers and the Assembly of State and Government in July 2000 in Lome, Togo. The hope was that a regional initiative would build upon the global UN Decade of Persons with Disabilities (1983-1992).

The African Decade was proclaimed with two principal goals, namely, (1) to renew efforts to implement the UN World Programme of Action of Disabled Persons in and to strengthen regional cooperation to address disability issues. Biegon notes that the adoption of the Decade by the LSAC on the OAU signaled its understanding of disability not as a human rights issue but as a social welfare issue, yet he observes that the Decade nonetheless embraced the principles of equality, full participation and empowerment of persons with disabilities.<sup>33</sup>

In July 2000, the African Union (AU) Constitutive Act was adopted and ratified soon after, marking the transition from the OAU to a new African Union. The AU possesses a human rights mandate, unlike its predecessor institution, and its Constitutive Act states that one of the objectives of the AU is to “promote and protect human and peoples’ rights in accordance with the African Charter on Human and Peoples’ Rights and other relevant human rights

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<sup>31</sup> See Japhet Biegon, The promotion and protection of disability rights in the African human rights system *in* ASPECTS OF DISABILITY LAW IN AFRICA 53 (Ilze Grobbelaar-du Plessis & Tobias Van Reenen eds., 2011).

<sup>32</sup> *Id.*

<sup>33</sup> *Id.* at 59.

instruments.”<sup>34</sup> Notably, the first AU Ministerial Conference on Human Rights in Africa was held in Kigali, Rwanda at which time the Ministers called attention to “the plight of the vulnerable groups including persons with disability in general” and, further, called upon member states to develop a Protocol on the protection of the rights of people with disabilities and the elderly.”<sup>35</sup>

In 2004, the Secretariat of the African Decade of Persons with Disabilities was established, headquartered in Cape Town, South Africa. Programmes on HIV and AIDS, youth and children, gender, law and policy, and livelihood opportunities and poverty reduction are in operation in five African countries (Ethiopia, Kenya, Rwanda and Senegal). The AU declared 2010–2019 as the second African Decade on the Rights of Disabled Persons.<sup>36</sup> Commentators point to the emergence of some references to persons with disabilities in the human rights documents of the AU.<sup>37</sup> In 2009, the African Commission expanded the mandate of the focal point on the rights of older persons in Africa to include the rights of disabled persons.

There is also some cooperation at the sub-regional level within Africa around disability issues. Of the eight regional economic communities recognized by the AU – Economic Community of West African States (ECOWAS), East African Community (EAC), Southern African Development Community (SADC), Intergovernmental Authority on Development (IGAD), Common Market for Eastern and Southern Africa (COMESA), Arab Maghreb Union (UMA), Community of Sahel-Saharan States (CEN-SAD), and the Economic Community of Central African States (ECCAS) – several have taken on disability and human rights issues as part of their respective agendas. Most active in this regard is SADC which has explicitly included disability as a protected ground within its non-discrimination clause.<sup>38</sup> EAC has likewise given some attention to disability issues and there is ample scope for a continuation of dialogue round disability, both within the sub-regional communities and among them.

### ***Normative Framework on the Right to Education for Persons with Disabilities***

The African Charter on Human and Peoples’ Rights is the starting point for any discussion of the human rights of persons with disabilities in Africa.<sup>39</sup> It is the first regional human rights convention to specifically recognize persons with disabilities as a protected

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<sup>34</sup> OAU Doc. CAB/LEG/23.25 adopted on 11 July 2000 in Lomé, Togo and entered into force on 26 May 2001.

<sup>35</sup> AU Constitutive Act, art 3(h).

<sup>36</sup> Secretariat of the African Decade of Persons with Disabilities, *A call for the protection of the rights of persons with disabilities*, <http://www.foroyaa.gm/modules/news/article.php?storyid=6755> (accessed 12 April 2012) (African Secretariat).

<sup>37</sup> Biegon, *supra* note 31 at 60.

<sup>38</sup> See Southern African Development Community Treaty, art 6(2). For more on the work of the sub-regional communities on human rights generally, see F. Viljoen, “The realization of human rights in Africa through sub-regional institutions” 7 *African Yearbook of International Law* 186 (2007); S. Ebobrah, “Human rights developments in African sub-regional economic communities during 2009,” 10 *African Human Rights Law Journal* 233–239 (2010).

<sup>39</sup> OAU Doc CAB/LEG/67/3 rev. 3, adopted on 26 June 1981 and entered into force 21 October 1986.

group,<sup>40</sup> although it does not recognize persons with disabilities in its non-discrimination clause.<sup>41</sup> The right to education is recognized in Article 11 of the African Charter and provides that every child has the right to education.<sup>42</sup> The provision further requires that States must take all appropriate measures with a view to achieve the full realization of the right to education and, specifically, must provide free and compulsory basic education.<sup>43</sup>

The African Charter on the Rights and Welfare of the Child (ACRWC)<sup>44</sup> protects the child from discrimination. Article 13(1) begins by providing that a child with disabilities has the right to special measures of protection. These measures should be provided not only in keeping with the physical and moral needs of the child, but also ‘under conditions which ensure his dignity, promote his self-reliance and active participation in the community’. Articles 13(2) and (3) enumerate specific positive actions that the state is obliged to take, subject to availability of resources, in ensuring the protection of children with disabilities. In particular, the state should ensure that a child with a disability has effective access to training, preparation for employment and recreation opportunities. These activities should be conducted in a manner conducive to the child achieving the fullest possible social integration, individual development and his or her cultural and moral development. A child with a disability should also be allowed access to public highways, buildings and other places to which he or she may legitimately want to have access to. Article 11 of the ACRWC addresses the right of the child to education.<sup>45</sup> While disability is not a specifically referenced prohibited ground of discrimination, it is well understood that the right to non-discrimination allies to all children and thus children with disabilities are indeed included. Article 13 of the ACRWC addresses the rights of children with disabilities.<sup>46</sup>

#### *The CRPD in Africa*

The adoption of the CRPD by general consensus on December 13, 2006<sup>47</sup> was an initiative strongly embraced by African States.<sup>48</sup> The Working Group that developed the draft text included delegations from seven African nations—Cameroon, Comoros, Mali, Morocco, Sierra Leone, South Africa, and Uganda.<sup>49</sup> Notably, the only seat allocated within the Working

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<sup>40</sup> *Id.*

<sup>41</sup> Note, however that persons with disabilities may fall within the category “other status” for the purposes of claiming protection from discrimination on the basis of disability.

<sup>42</sup> *Id.* at art. 11.

<sup>43</sup> *Id.*

<sup>44</sup> OAU Doc CAB LEG/24.9/49 adopted on 11 July 1990 and entered into force on 29 November 1999.

<sup>45</sup> *Id.* at art. 43.

<sup>46</sup> *Id.* at art. 11.

<sup>47</sup> The negotiation history of the CRPD, as well as updates on State Parties, can be found on a website maintained by UN DESA. See ‘Promoting the rights of persons with disabilities: full participation and equality in social life and development’ Enable, <http://www.un.org/esa/socdev/enable/rights/> (UNEnable).

<sup>48</sup> See MA Stein & JE Lord ‘Human rights and humanitarian assistance for refugees and internally displaced persons with disabilities’ in I Grobbelaar-du Plessis & T Van Reenan (eds) *Aspects of disability law in Africa* (2011) 31.

<sup>49</sup> UNEnable, *supra* note 47.



Group to represent national human rights institutions was held by a distinguished disabled lawyer and commissioner from the South African Human Rights Commission.<sup>50</sup>

Sixteen African countries signed the CRPD on March 30, 2007, the first day it opened for signature,<sup>51</sup> and twenty-seven have since ratified the treaty,<sup>52</sup> contributing to its rapid entry into force. The Committee on the Rights of Persons with Disabilities has had experts from Algeria, Kenya, and Tunisia,<sup>53</sup> and the current Special Rapporteur on Disability is South African disability rights advocate, Mr. Shuaib Chalklen.<sup>54</sup>

The CRPD has thus been embraced on the African continent with enthusiasm, but much needs to be done in order for it to take effect, whether in the education sphere or indeed in other disability rights contexts. The CRPD challenges Africa's States parties—as it does States parties from all regions of the world—to ensure treaty implementation in a manner that responds to broad obligations while being duly consonant to domestic social and legal norms.<sup>55</sup>

### *Towards an African Protocol on Disability Rights*

A Draft African Protocol on the Rights of Persons with Disabilities<sup>56</sup> is currently underway that will, ideally, add specific African texture to the right of persons with disabilities to education. In addition, it is expected that the adoption of the CRPD will prompt African region human rights mechanisms to increasingly utilize its provisions in its work, including, for example, the African Commission and Court on Human Rights as well as the African Committee on Child Rights, each of which has relevance for protecting and promoting the right of persons with disabilities to education.

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<sup>50</sup> *Id.*

<sup>51</sup> Algeria, Cape Verde, Republic of the Congo, Ethiopia, Gabon, Ghana, Kenya, Liberia, Morocco, Mozambique, Niger, Nigeria, Sierra Leone, South Africa, Sudan, Tunisia, Uganda and Tanzania. UNEnable (n 3 above).

<sup>52</sup> Algeria, Burkina Faso, Burundi, Cameroon, Cape Verde, Central African Republic, Comoros, Republic of the Congo, Egypt, Ethiopia, Gabon, Ghana, Guinea, Kenya, Lesotho, Liberia, Madagascar, Mali, Malawi, Mauritius, Morocco, Mozambique, Namibia, Niger, Nigeria, Rwanda, Senegal, Seychelles, Sierra Leone, South Africa, Sudan, Swaziland, Togo, Tunisia, Uganda, Tanzania and Zambia. UNEnable (n 3 above).

<sup>53</sup> Information about the Committee is available on a website maintained by the UN Office of the High Commissioner for Human Rights, <http://www.ohchr.org/EN/HRBodies/CRPD/Pages/Membership.aspx> (accessed 12 April 2012).

<sup>54</sup> UNEnable, *supra* note 47.

<sup>55</sup> See Janet E. Lord & Michael A. Stein, “The domestic incorporation of human rights law and the United Nations Convention on the Rights of Persons with Disabilities,” 83 *University of Washington Law Review* 449 (2008).

<sup>56</sup> For the Draft Protocol, see Report of the Meeting of the Working Group on Older Persons and People with Disabilities in Africa, Balaclava, Mauritius, 9–11 August 2010.

## **PART III - EAC COUNTRY REVIEWS**

### ***Introduction***

The implementation of inclusive education consistent with international standards as set forth in the CRPD and other international instruments is a process that requires action at national, regional and local levels and also action in schools and classrooms. Critical to the development of an effective plan to implement inclusive education is the identification of barriers within a given country context at all levels and solutions specifically tailored to the context. The adoption and rapid ratification of the CRPD by countries around the world is serving as an impetus for a renewed commitment to inclusive education, in keeping with Article 24 and related provisions of the CRPD. At the same time, helpful guidance that can be utilized and adapted to specific country contexts is increasingly available and grounded in good practices. The sections that follow provide an overview of the law, policy and institutional frameworks for each EAC country – Burundi, Kenya, Rwanda, Tanzania and Uganda - with particular attention to the implementation of the right to inclusive education for persons with disabilities consistent with principles of non-discrimination and inclusion as set forth in the CRPD. Each country review is followed by a short set of recommendations that are based upon the principles of the CRPD and informed by recommended steps toward the implementation of the right to inclusive education for children with disabilities by UN bodies, including, for example, the Special Rapporteur on the Right to Education.

# Burundi

## General Overview

A July 2012 estimate revealed that Burundi has a population of approximately 10,557,259 people.<sup>57</sup> For many years, conflict has displaced a large portion of the rural population while destroying economic and social infrastructure. Consequently, poverty is extremely common in rural areas and 80 percent of the population still faces food insecurity.<sup>58</sup> It is estimated that there are approximately 150,000 internally displaced persons (IDPs), 29,000 Congolese Refugees, and 400 Rwandan Refugees in Burundi.<sup>59</sup> The total number of displaced, refugee, and/or exiled Burundians is estimated at 1-1.2 million people (about 16 percent of the population during the war).<sup>60</sup> Burundi is ranked 21<sup>st</sup> in the world for HIV/AIDS prevalence at 3.3 percent,<sup>61</sup> and those most vulnerable to contracting HIV/AIDS include school dropouts, IDPs, and refugees.<sup>62</sup> Handicap International estimates that people with disabilities in Burundi have a 12.3 percent HIV infection rate compared to the general adult population HIV infection rate of 3.3 percent.<sup>63</sup>

**Table 8: Burundi - Relevant Domestic Education Legislation & Policy**

### Education Act of 1967

- Declared all primary level education to be free.

### Education for All Policy (2005)

- Provides free schooling for all children up to age 15.

### Constitution (2005)

- **Article 22:** General prohibition of discrimination. Specifically includes prohibition of discrimination against persons with disabilities.
- **Article 30:** Places obligation on parents to provide education and raise children.
- **Article 53:** Grants every citizen the right of equal access to education, and places obligation on state to “organize and promote public education.”

<sup>57</sup> Central Intelligence Agency. (2012). The World Factbook: Burundi. Updated October 16, 2012, <https://www.cia.gov/library/publications/the-world-factbook/geos/by.html> (last visited October 24, 2012) [hereinafter CIA Factbook Burundi]

<sup>58</sup> World Bank, Burundi: Country Brief (2011), <http://web.worldbank.org/WBSITE/EXTERNAL/COUNTRIES/AFRICAEXT/BURUNDIEXTN/0,,menuPK:343761~pagePK:141132~piPK:141107~theSitePK:343751,00.html> (last visited October 24, 2012). [ hereinafter World Bank Brief Burundi].

<sup>59</sup> United Nations High Commissioner for Refugees, Country Operations Profile, Burundi (2012), <http://www.unhcr.org/pages/49e45c056.html> (last visited October 24, 2012).

<sup>60</sup> UNICEF, Humanitarian Action Report, Burundi (2009), [http://www.unicef.org/har09/index\\_burundi.php](http://www.unicef.org/har09/index_burundi.php) (last visited October 24, 2012).

<sup>61</sup> Burundi is ranked 29<sup>th</sup> in the number of people living with HIV/AIDS at 180,000 people, and 19<sup>th</sup> in the world for HIV/AIDS related deaths at 15,000 per year. See CIA Factbook Burundi, *supra* note 57.

<sup>62</sup> WORLD HEALTH ORGANIZATION, SUMMARY COUNTRY PROFILE FOR HIV/AIDS TREATMENT SCALE UP: BURUNDI (December 2005), 1, Retrieved October 24, 2012 from [http://www.who.int/hiv/HIVCP\\_BDI.pdf](http://www.who.int/hiv/HIVCP_BDI.pdf) .

<sup>63</sup> Handicap International United States, 2010 Annual Report, 7, [http://www.handicap-international.us/fileadmin/files/reports/HI\\_2010\\_AnnualReport-web.pdf](http://www.handicap-international.us/fileadmin/files/reports/HI_2010_AnnualReport-web.pdf)

According to a World Health Organization report, approximately 5-8 percent of the Burundi population is a person with a disability.<sup>64</sup> Disability is associated with negative social stigma, in some instances driven by the belief that disability reflects a curse and/or is a burden for the family and community. The word for disability in Burundi's official language, Kurundi, is "*imbimuga*" which means "broken pots"—useless people without a future.<sup>65</sup>

## Overview of Education System

The Burundian Education Act of August 1967, declared all primary level education to be free which contributed to a rise in both enrollment and in number of schools.<sup>66</sup> However the civil war and armed conflict that erupted in 1993 destabilized the country and undermined progress in education.<sup>67</sup> The enrollment rate went from 71 percent in 1990 to 41 percent in 1997, with 43 percent of the state budget allocated for defense and only 13 percent to education during the 2002-2003 period.<sup>68</sup> Additionally, the loss and flight of many teachers and the poor living conditions experienced by many Burundi citizens forced many to abandon schooling altogether.<sup>69</sup> In 2005, the renewed promise of compulsory free education and the implementation of the peace process contributed towards the reconstruction of the educational system and a "return to school" by Burundi children.<sup>70</sup>

In August 2005, President Pierre Nkurunziza reaffirmed in his inaugural speech that primary students would no longer pay school fees.<sup>71</sup> This free school policy for all children up to the age of 15<sup>72</sup> was adopted in September 2005 and formed part of a larger EAC commitment to increase access to education for students in the international EFA policy and the MDGs.<sup>73</sup> In 2005, the net primary school enrollment rate for Burundian children was estimated to be 59

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<sup>64</sup> WORLD HEALTH ORGANIZATION, REVIEW OF DISABILITY ISSUES AND REHABILITATION SERVICES IN 29 AFRICAN COUNTRIES, 30 (December 2004), Retrieved October 24, 2012 from <http://www.who.int/disabilities/publications/care/African%2029%20country%20report%20updated-12-2004.pdf> [hereinafter WHO Review].

<sup>65</sup> Jaz Cummins, *Global Development Voice: Living with Disabilities*, GUARDIAN NEWSPAPER, December 15, 2011, <http://www.guardian.co.uk/global-development/2011/dec/15/disability-voices-development?INTCMP=SRCH>.

<sup>66</sup> Hermenegilde Rwantabagu, Providing Primary Education for All in a Post-Conflict Context: The Case of Burundi. N.D., at 3. <http://www.cfbt.com/evidenceforeducation/pdf/Rwantabagu%20-%20Providing%20Primary%20Education%20in%20Burundi.pdf>.

<sup>67</sup> *Id.* at 5.

<sup>68</sup> *Id.*

<sup>69</sup> *Id.*

<sup>70</sup> *Id.*

<sup>71</sup> Right to Education Project, National Law and Policies on fee or for free- Burundi, <http://www.right-to-education.org/country-node/315/country-fee> (last visited October 24, 2012); Katarina Tomasevski, The State of the Right of Education Worldwide Fee or Free: 2006 Global Report (2006), [http://www.katarinatomasevski.com/images/Global\\_Report.pdf](http://www.katarinatomasevski.com/images/Global_Report.pdf) (last visited October 24, 2012).

<sup>72</sup> Olaf G Alteren, Educational Success for Disabled Children in Burundi, Norwegian Refugee Council (2010), <http://www.nrc.no/?did=9531698> (last visited October 24, 2012).

<sup>73</sup> World Bank Brief Burundi *supra* note 58.; EAC Secretariat, East African Community Regional Report on the Study of Harmonisation of the East African Education Systems and Training Curricula (2011), [http://www.eac.int/rmo/index.php?option=com\\_docman&task=doc\\_download&gid=137&Itemid=238](http://www.eac.int/rmo/index.php?option=com_docman&task=doc_download&gid=137&Itemid=238).

percent of boys, and 48 percent for girls.<sup>74</sup> From 2003-2004, approximately 80 percent of primary school aged children attended school.<sup>75</sup> In 2010, the net enrollment rate for primary school stood at 89.7 percent.<sup>76</sup> That said, the completion rate in 2010 for primary school is still rather low—56.1.<sup>77</sup> Currently, Burundi has a literacy rate of 67.2 percent.<sup>78</sup>

All regulations and directives in Burundi are created by the central administration departments with responsibilities related to education including the following: Ministry of Education, Department of Primary and Secondary Schools, Ministry of Education, Department of Trades, Vocational Training, and Literacy, and the Ministry of Education, Department of Higher Education and Scientific Research. Appointments and assignments of teachers are authorized by the central authority. Initial and continuing training for educators is also organized by the central authority and based on the opinions of service users and beneficiaries. In addition, all material and financial resources necessary for the work of education is decided by the central authority with consideration of provincial, regional, and community needs.<sup>79</sup>

The Inspectorate General of Education is responsible for inspecting primary and secondary schools and their teaching practices, administrative and financial aspects, curriculum and textbook development, teacher training, and assessment methods of students (examinations).<sup>80</sup> The Evaluation Office of the education system is responsible for assessing learning outcomes; evaluating programs; assessing relevance of teaching materials; assessing relevance, coherence, and effectiveness of design of educational assessments; processing results of national assessments; and offering regulatory mechanisms for quality improvement. More localized authorities of the Ministry of Education include the Provincial Director of Education,<sup>81</sup> the provincial council,<sup>82</sup> and the Directorate of Communal Education.<sup>83</sup>

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<sup>74</sup> UNICEF, Burundi: Free Primary Education for All Children (2005), [http://www.unicef.org/infobycountry/burundi\\_28197.html](http://www.unicef.org/infobycountry/burundi_28197.html); <http://www.unicef.org/sowc05/english/statistics.html> (last visited October 24, 2012).

<sup>75</sup> World Bank Brief Burundi, *supra* note 58.

<sup>76</sup> *Id.*

<sup>77</sup> *Id.*

<sup>78</sup> 72.9% male, 61.8% female. CIA Factbook Burundi, *supra* note 57.

<sup>79</sup> United Nations Educational, Scientific, and Cultural Organization, World Data on Education, 7<sup>th</sup> Edition, (2010/11), [http://www.ibe.unesco.org/fileadmin/user\\_upload/Publications/WDE/2010/pdf-versions/Burundi.pdf](http://www.ibe.unesco.org/fileadmin/user_upload/Publications/WDE/2010/pdf-versions/Burundi.pdf). [hereinafter UNESCO World Data on Education].

<sup>80</sup> *Id.*; Reorganization of Ministry of Primary and Secondary Education, Decree No. 100/44, *Rep. of Burundi*, March 9, 2010.

<sup>81</sup> The Provincial Director of Education works under different branches according to their area of expertise, and coordinates the activities of the municipal education directors within its district. The Provincial Director is the official representative of the Provincial governor and officials of the Ministry regarding the operation of the whole system of primary and secondary schools. An advisory body assists the Provincial Director in his or her duties. UNESCO World Data on Education Burundi, *supra* note 79.

<sup>82</sup> The Provincial Council gives general education guidance in accordance with national education policy. *Id.*

<sup>83</sup> The Directorate of communal education oversees all actions conducted within the municipality in the education sector and is responsible to propose recruitment for teachers, manage personnel records, and participate in selection of candidates for directors of primary and secondary schools. The Directorate also has an advisory body. *Id.*

Primary school is approximately six years long for children from 7-12 years of age.<sup>84</sup> To complete primary education, a student must obtain a Certificate (Certificat d'Etudes primaires).<sup>85</sup> Secondary education is split up into two parts: lower and upper secondary education.<sup>86</sup> The lower education component lasts up to four years and is available to those who pass the National Entrance Examination.<sup>87</sup> Another national test is required for those who complete lower secondary education.<sup>88</sup> Once a student completes an additional three years of upper secondary education, they will receive a Diplôme d'Etat, which provides access to higher education.<sup>89</sup>

In 2002, a UNICEF study revealed that there were 10,577 children with physical and mental disabilities in Burundi.<sup>90</sup> 23 percent of these children were enrolled at formal institutions of learning, while approximately 13 percent (1,421 total) were attending special institutions.<sup>91</sup> According to a World Bank Paper from 2000, in the group of children ages 6-11, about 14.6 percent of children with a disability in Burundi attended school (compared to 37.2 percent without a disability). In the same survey, within the group of children ages 12-17 years of age, 48 percent of children with a disability attended school, whereas 47.8 percent of children without a disability attended school.<sup>92</sup> The World Bank Report used household surveys to gather data that utilized a very narrow definition of disability, only including children with vision, hearing, speech, and physical disabilities. This suggests that higher attendance rate of children with disabilities in the 12-17 age range is misrepresentative of the entire population of children with disabilities as it does not seem to include students with intellectual, psychosocial disabilities, or learning disabilities. One education expert points out that because of the decades of conflict, warfare, and violence in Burundi, that the size of the population of children is unknown and therefore precise statistics are hard to rely on.<sup>93</sup> The majority of special education centers in Burundi are run by religious organizations, and there is ongoing concern regarding an apparent lack of prioritization of access to education for children with disabilities.<sup>94</sup>

## Law and Policy Framework

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<sup>84</sup> Embassy of the Republic of Burundi, Washington, D.C. U.S.A., Burundi in Depth, (N.D.) <http://www.burundiembassy-usa.org/burundiindepth.html> [hereinafter Burundi Embassy].

<sup>85</sup> *Id.*

<sup>86</sup> *Id.*

<sup>87</sup> *Id.*

<sup>88</sup> *Id.*

<sup>89</sup> *Id.*

<sup>90</sup> *Burundi: UNICEF launches child-soldier project*, IRIN HUMANITARIAN NEWS AND ANALYSIS, February 28, 2002, <http://www.irinnews.org/Report/30528/BURUNDI-UNICEF-launches-child-soldier-project> (last visited October 24, 2012) [hereinafter IRIN News Burundi].

<sup>91</sup> *Id.*; Rwantabagu, *supra* note 66.

<sup>92</sup> This included vision, hearing, speech, and physical disabilities. Deon Filmer, World Bank Social Protection Papers, Disability, Poverty, and Schooling In Developing Countries: Results from 11 Household Surveys, 9(Nov. 2005), <http://siteresources.worldbank.org/SOCIALPROTECTION/Resources/SP-Discussion-papers/Disability-DP/0539.pdf>.

<sup>93</sup> Tomasevski, *supra* note 71, at xxix.

<sup>94</sup> Rwantabagu, *supra* note 66, at 8.

Burundi ratified the CRC in 1990<sup>95</sup> and signed the CRPD on April 26, 2007. It has not yet ratified the CRPD.<sup>96</sup> Burundi has a mixed legal system of Belgian Civil Law and customary law.<sup>97</sup> In addition, as previously mentioned, Burundi is a part of the East African Community commitment to increase access to education for all students in the international *EFA* initiative and the MDGs.

### Constitution of Burundi

Article 22 of the 2005 Constitution of Burundi includes a general prohibition of discrimination based on several statuses, including “physical or mental handicap”, HIV status, or other incurable diseases.<sup>98</sup> Additionally, Article 30 includes a parental duty to provide education and raise children<sup>99</sup> and Article 53 states that every citizen has the right to equal access to education and culture, and gives the state the duty to organize and promote public education.<sup>100</sup> While the Burundi Constitution guarantees “equal access to education”, it does not affirm that right through a mechanism that obliges the state to enforce access to education for each child.<sup>101</sup> While the Constitution does prohibit discrimination on the basis of disability generally and includes a right of access to education for all children, Handicap International and the World Health Organization (2004) have reported that persons with disabilities are not specifically protected in any substantial legislation or policy in Burundi<sup>102</sup> which undermines progress on inclusive education for children with disabilities.

Recently, RAPHB, a network of Burundi DPOs, formed a partnership with the Ministry for Solidarity which is responsible for the protection of persons with disabilities. In 2010, the Ministry funded income generating projects for associations and centers for persons with disabilities. Additionally, the Ministry of Public Health committed to provide care to all children under five, including disabled children. RAPHB and the Ministry of Public Health are working together to provide care to all children under five including children with disabilities. Additionally RAPHB and the Ministry of Public Health are trying to establish an inclusive education system with the support of Handicap International (HI).<sup>103</sup> HI has been present in

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<sup>95</sup> United Nations Treaty Collection, Convention on the Rights of the Child, List of Ratifications (2012). [http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-11&chapter=4&lang=en](http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11&chapter=4&lang=en) (last visited October 24, 2012).

<sup>96</sup> United Nations Enable, Convention and Optional Protocol Signatures and Ratifications (2012), [http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-11&chapter=4&lang=en](http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11&chapter=4&lang=en) (last visited October 24, 2012).

<sup>97</sup> CIA Factbook Burundi, *supra* note 57.

<sup>98</sup> *Constitution de Burundi (consolidated 2005)* [Burundi], 18 March 2005, Article 22, available at: <http://www.unhcr.org/refworld/docid/4c2df0942.html> [accessed 24 October 2012].

<sup>99</sup> BURUNDI CONST. (2005), art. 30.

<sup>100</sup> BURUNDI CONST. (2005), art. 53.

<sup>101</sup> Tomasevski, *supra* note 71.

<sup>102</sup> Handicap International, Where we work: Burundi Fighting AIDS. (N.D.), [http://www.handicap-international.us/where-we-work/programs/?dechi\\_programmes%5Bselpays%5D=9&cHash=4e47ba27a5](http://www.handicap-international.us/where-we-work/programs/?dechi_programmes%5Bselpays%5D=9&cHash=4e47ba27a5); WHO Review, *supra* note 64.

<sup>103</sup> Cummins, *supra* note 65.

Burundi since 1992, and one of their major projects is fostering inclusive education. HI's goal is to improve awareness of disability so that teaching and learning systems can better adapt to the specific needs of children with disabilities and promote their educational development and social inclusion. HI estimates over 900 children with disabilities will benefit from their efforts.<sup>104</sup>

## Implementation

While the government of Burundi has focused to some extent on improving its overall education system, the government has not prioritized the inclusion of children with disabilities in education through policy. Moreover, the underdevelopment of the legal framework to protect the right of persons with disabilities to access education, along with other rights, is a significant barrier to progress.

The cost of education is one impediment to equal access for marginalized and vulnerable groups of students. While the ministerial directive clearly prohibits discrimination against indigent children, in reality, headmasters continue to send indigent students home, if they have not paid their fees. In 2005, UNICEF's representative, Catherine Mbengue, highlighted the consequence of this practice and stated that only a third of school age children attended school.

Experts have also criticized a lack of statistics on school enrollment of children generally.<sup>105</sup> It is clear that there are not adequate resources being devoted to identifying and monitoring the progress of students with disabilities in education.

Another criticism of the current educational framework and EFA Plan in Burundi is the absence of acknowledgement of the impact of conflict and violence on students and measures that account for these impacts that might improve enrollment and completion numbers.<sup>106</sup>

The CRC Committee has reported that they are concerned with the situation of children with disabilities in Burundi, especially their limited access to education. The CRC Committee has recommended that Burundi should revise and adopt legislation to establish a monitoring system to protect children with disabilities. The Committee has also suggested recording progress made in reaching inclusive education goals and to identify shortcomings in implementation, yet to date little progress has been made in putting an effective monitoring system in place. The CRC Committee suggests providing community based services to children with disabilities to ensure their inclusion and participation, and carrying out awareness raising campaigns to combat discriminatory attitudes and sensitize the Burundi public about the rights and special needs of children with disabilities. Another recommendation of the CRC Committee is to equip schools with necessary facilities that inclusive education requires so that students with disabilities can choose their preferred school or move between mainstream schools and special needs schools according to their own best interests.<sup>107</sup>

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<sup>104</sup> Handicap International, Where we work, Burundi: Enhancing the autonomy and dignity of people with disabilities, Inclusive Education, [http://www.handicap-international.org.uk/where\\_we\\_work/africa/burundi](http://www.handicap-international.org.uk/where_we_work/africa/burundi).

<sup>105</sup> Tomasevski, *supra* note 71, at 21.

<sup>106</sup> *Id.*

<sup>107</sup> Convention on the Rights of the Child Committee Report: Burundi (October 1, 2010), 50-51, <http://sim.law.uu.nl/SIM/CaseLaw/uncom.nsf/804bb175b68baaf7c125667f004cb333/dffea791a2f6a41cc12577c10049a65e?OpenDocument> (last visited October 24, 2012).



Additionally, the United States Department of State, Burundi 2011 Human Rights report acknowledges that while the Burundi Constitution does prohibit discrimination of persons with disabilities, the government was unable to promote or protect the rights of persons with disabilities in the area of education.<sup>108</sup>

Personal narratives affirm the situation reflected in reporting regarding barriers in access to education, as the account of one advocate with a disability disclosed:

Disabled people do not have equal access to education, health and information. Their fundamental rights are not respected. When I was growing up, and because of my physical impairment after having polio as a child, opportunities were very limited. A disabled child couldn't go to a mainstream school or access health services. Their family would try to hide them so that the local community wouldn't know that the family was "cursed". Today, a disabled child is seen as more equal to other children. But much remains to be done.<sup>109</sup>

## **Recommendations**

### **Law, policy and institutional reforms**

- **Ratification of the CRPD.** To date, Burundi has signed, but not ratified the CRPD.
- **Review and reform of law and policy framework to protect the rights of persons with disabilities.** Currently, the Burundian law and policy framework does not provide adequate protection for the right of persons with disabilities, nor does it provide explicit protection of the right to inclusive education. Inclusive education should be recognized as a specifically protected right; discrimination on the basis of disability in education should be prohibited; and the duty to provide reasonable accommodation in education included as an essential element of non-discrimination.
- **Improve coordination of all disability related ministries.** Responsibility for coordination of inclusive education should rest within a single ministry. In addition, all disability issues should ideally falls within the responsibility of a single governmental coordinating entity. Coordination among all stakeholders, governmental as well as DPOs, research institutes, and other NGOs, should be improved in order to promote coherency and consistency in regulations, policy, and monitoring mechanisms that reflect the goals of inclusion of PWD.

### **Resource allocation for inclusive education**

- **Allocate resources to inclusive education.** Funding must be directed towards inclusive education goals; and the receipt of funding to schools should be linked to implementation

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<sup>108</sup> The report also concludes that Burundi was unable to promote or protect the rights of persons with disabilities with respect to employment and access to healthcare. United States Department of State, Human Rights Report, Burundi (2011), <http://www.state.gov/j/drl/rls/hrrpt/2011/af/186171.htm>.

<sup>109</sup> Cummins, *supra* note 65.

of inclusive education practices and enrollment, completion, and employment outcomes for students with disabilities.

- **Allocate resources for improving physical accessibility of all schools.** Physical accessibility of schools presents major barriers for students with physical disabilities. Plans to improve accessibility must be adopted, with sufficient resource allocation to achieve accessibility progressively.
- **Allocate resources for improving information accessibility within all schools.** This includes providing information (signs and classroom materials) in accessible formats including plain language, braille, large print, sign language, etc. Plans to improve accessibility must be adopted, with sufficient resource allocation to achieve accessibility progressively.
- **Allocate resources for improving public transportation accessibility.** Plans to improve accessibility must be adopted, with sufficient resource allocation to achieve accessibility progressively.

#### **Disability data collection**

- **Introduce accurate data gathering on disability and the education of children with disabilities.** Data and statistics are not currently gathered in an ongoing and consistent fashion in Burundi and are therefore required in order to track progress & implementation of inclusive education for persons with disabilities.

#### **Teacher Training and Curriculum**

- In order to advance inclusive education, “special needs”/inclusive education training should be incorporated into the general education curriculum for all teachers. Teachers with disabilities should be recruited as well as special scholarships for students with disabilities in secondary and tertiary education to incentivize completion.

#### **Access to Justice to Protect the Right to Inclusive Education**

- Remedies and accessible due process procedures should be put in place for students with disabilities to access in cases of discrimination, including physical or informational inaccessibility, or unequal treatment based on disability, lack of adequate support and services for students with disabilities, and the failure to provide reasonable accommodations.

#### **Implement Disability Awareness-raising**

- **Create public service & awareness campaigns** dedicated at all youth promoting inclusion of persons with disabilities to combat stigma.

#### **Consultation with persons with disabilities through their representative organizations.**

- DPOs should be involved in the development of inclusive education related law, policy and regulations as well as teacher curriculum requirements.

# ***Kenya***

## **General Background**

As of July 2012, the population of Kenya is estimated to be 43,013,341 people.<sup>110</sup> English is the official language and Kiswahili is the national language in Kenya.<sup>111</sup> Government and education are conducted in English, and some government programs are conducted in Kiswahili. In addition to these two languages, most Kenyans also speak a local ethnic language.<sup>112</sup> Research indicates that about 1 million school aged children are out of school including children with disabilities, those affected by HIV/AIDS, and/or those living in urban slums.<sup>113</sup>

Kenya is ranked 11<sup>th</sup> in the world for HIV/AIDS prevalence rate and 4<sup>th</sup> in the world for the number of people living with HIV/AIDS with an estimate of 1.5 million people. Kenya is ranked 6<sup>th</sup> in the world for HIV/AIDS related deaths at an average of 80,000 deaths per year.

Because of Kenya's role as mediator in the Sudanese North/South separation, Kenya provides shelter to almost 250,000 refugees including Ugandans seeking refuge from the Lord's Resistance Army Rebels.<sup>114</sup> There are estimated to be about 522,000 Somalians, 20,258 Sudanese, 34,000 Ethiopians, and 11,500 Congolese refugees living in Kenya.<sup>115</sup> As of 2012, approximately 250-350 thousand internally displaced persons (IDPs) are estimated to live within Kenya's borders.<sup>116</sup> Approximately 980,000 orphans are enrolled in primary school in Kenya representing 14.5 percent of the total enrollment in 2006. The Ministry of Education in collaboration with the Ministry of Home Affairs has put programs in place to assist orphans to ensure that they access education.<sup>117</sup>

In 2009 a national census revealed approximately 1,330,312 persons with disabilities living in Kenya (3.5% prevalence rate).<sup>118</sup> A 2008 National Survey estimated that 4.6% of the Kenyan population was a person with a disability.<sup>119</sup> However, a DRPI report from 2007

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<sup>110</sup> Central Intelligence Agency. (2012). The World Factbook: Kenya, <https://www.cia.gov/library/publications/the-world-factbook/geos/ke.html> (last visited October 24, 2012). [hereinafter CIA Factbook Kenya].

<sup>111</sup> Elly Macha, Martin Kietia & Mike Ngunyi, *State of Disabled Peoples Rights in Kenya*, 13, African Union of the Blind (2007), <http://drpi.research.yorku.ca/sites/default/files/files/KenyaReport07.pdf>.

<sup>112</sup> *See id.* (noting that there are over 40 local ethnic languages in Kenya).

<sup>113</sup> Evangeline Njoka et al., *2011 Triennial on Education and Training in Africa - Towards Inclusive and Equitable Basic Education System: Kenya's experience*, 11 (2011) (working document) (on file with Association for the Development of Education in Africa).

<sup>114</sup> CIA Factbook Kenya, *supra* note 110.

<sup>115</sup> *Id.*

<sup>116</sup> *Id.*

<sup>117</sup> United Nations Educational, Scientific, and Cultural Organization, World Data on Education, 7<sup>th</sup> Edition, Kenya (2010/11)., [http://www.ibe.unesco.org/fileadmin/user\\_upload/Publications/WDE/2010/pdf-versions/Kenya.pdf](http://www.ibe.unesco.org/fileadmin/user_upload/Publications/WDE/2010/pdf-versions/Kenya.pdf) (last visited October 24, 2012). [hereinafter UNESCO World Data on Education Kenya].

<sup>118</sup> Kenya National Bureau of Statistics, Population and Housing Survey 2009, <http://www.knbs.or.ke/censusdisability.php>. Males: 647,689 (3.4%); Females: 682,623 (3.5%).

<sup>119</sup> UNESCO World Data on Education: Kenya, *supra* note 117.

estimates that the disability rate in Kenya is 10 percent of the population (3,280,000).<sup>120</sup> Approximately 80 percent (1.4 million) of persons with disabilities live in slums, informal settlements on the edge of cities, or under very poor conditions in rural areas.<sup>121</sup> About 25 percent of persons with disabilities in Kenya are school aged children. Out of 750,000, about 90,000 have been identified and accessed, but only about 15,000 are currently enrolled in educational programs and an equivalent number have been integrated into regular schools.<sup>122</sup> This means that almost 90 percent of children with disabilities are either at home or in regular schools with little or no support.<sup>123</sup>

## Overview of Education System

Education expenditures are estimated to be about 7% of the Kenyan GDP (2006), and literacy rates are at 87.5% of the population.<sup>124</sup> Since 2003, the government of Kenya has prioritised the EFA initiative, including free primary education by abolishing school levies and introducing capitation grants.<sup>125</sup> It has resulted in a large increase of enrollment rates within primary school and has also resulted in the government applying a similar approach to special education and schools for children with disabilities.<sup>126</sup>

Public schooling in Kenya has a format of primary school (8 years), secondary school (4 years) and university education (4 years).<sup>127</sup> Prior to primary school, children between the ages of three and six years are required to attend pre-primary school for one or two years.<sup>128</sup> Primary school is for children age 6-14 years of age.<sup>129</sup> At the end of the eighth year, the Kenya Certificate of Primary Education (K.C.P.E.) is taken and the results are used to determine placement at secondary school on a merit basis.<sup>130</sup> It is estimated that Kenya's primary school enrollment rate is 86% for both boys and girls.<sup>131</sup> At the end of the fourth year in secondary school, the Kenya Certificate of Secondary Education is taken in certain mandatory and elective subjects for tertiary and higher education.<sup>132</sup> The enrollment rate in secondary school is 43% for

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<sup>120</sup> *Id.*

<sup>121</sup> *Id.*

<sup>122</sup> Kenya Ministry of Education Science and Technology, Development of Education in Kenya (August 2004), <http://www.ibe.unesco.org/International/ICE47/English/Natrebs/reports/kenya.pdf>.

<sup>123</sup> *Id.*

<sup>124</sup> CIA Factbook Kenya, *supra* note 110. Literacy rate reflects persons over the age of 15 who can read and write. According to a 2010 estimate, 90.6% of males and 84.2% of females meet this definition in Kenya.

<sup>125</sup> Njoka et al., *supra* note 113.

<sup>126</sup> UNESCO World Data on Education: Kenya, *supra* note 117.

<sup>127</sup> See Chris Wosyanju, *The System of Education in Kenya*, 4, 11, <http://international.iupui.edu/kenya/resources/Education-in-Kenya.pdf>.

<sup>128</sup> *Id.* at 3.

<sup>129</sup> *Id.*

<sup>130</sup> *Id.*

<sup>131</sup> *Id.*

<sup>132</sup> *Id.* at 5.

girls and 47% for boys.<sup>133</sup> Kenya has a centralized education system, which has been criticized as being ineffective due to unnecessary bureaucracy that prevents field education officers from being adequately empowered to perform their duties.<sup>134</sup> This has also led to inadequate legal provisions that would otherwise enforce quality standards and use inspection reports to improve performance of schools.<sup>135</sup>

The Kenya Institute of Special Education (KISE) was established in 1986 and trains teachers on special education at the diploma level using distance learning mode and residential learning mode.<sup>136</sup> KISE is an administrative body without legislative authority and, so it may only [functions] to pursue the needs of people with disabilities. Each district in Kenya has an Educational Training, Assessment and Resource Centres (EARCs) which are staffed by experienced KISE trained special education teachers. EARCs can assess and make recommendations for the educational and development needs of children with disabilities.

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In its 2009 SNE Draft Policy Paper, the government of Kenya recognized the importance of Special Needs education as a “crucial subsector” for accelerating the attainment of EFA and the MDGs.<sup>138</sup> In this paper, a technical committee in SNE policy examined existing policy documents in education and related legislation and organized a workshop in each province (8 total) to collect ideas and perspectives from key stakeholders including NGOs, faith based organizations, government officials, and individuals. The SNE Draft Policy paper also employs the Ministry of Education to implement several recommendations with respect to assessments and interventions, curriculum development, capacity building and human resource development, advocacy and awareness, and research and documentation. The SNE Draft Policy papers also calls for the creation of a comprehensive annual Monitoring and Evaluation (M&E) framework to ensure implementation of the policy.

## **Law and Policy Framework**

Kenya has an extensive set of policy and legal instruments to implement the goals of inclusive education set out in Article 24 of the CRPD. Kenya is committed to the EFA on the

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<sup>133</sup> *Id.*

<sup>134</sup> *Radical Reforms for Kenya's Education Sector: Implementing Policies Responsive to Vision 2030*, Institute of Policy Analysis & Research (IPAR), 4 POLICYVIEW 5 (2008), <http://www.usbeckkenya.org/Radical%20Reforms%20for%20Kenya's%20Education%20Sector.pdf>.

<sup>135</sup> *Id.* at 6.

<sup>136</sup> Kenya Institute of Special Education, <http://www.kise.co.ke/> (last visited November 14, 2012).

<sup>137</sup> *Id.*.

<sup>138</sup> National Special Needs Educational Policy Framework.

Right to Education for Persons with Disabilities<sup>139</sup> and MDG 2 concerning universal education.<sup>140</sup> In September 2011 Kenya served as a host country to the Eastern African High-Level Forum on Education for All, and has shared its own experiences in undertaking comprehensive national education assessments with Ministry officials from other nations in Africa.<sup>141</sup> The CRPD was ratified by Kenya in May 2008. In addition, Kenya has ratified a number of other international human rights instruments that affirm the right to education, including CEDAW, CRC and the African Charter on Human and People's Rights. The Kenyan government has often missed deadlines to submit national reports to the human rights treaty bodies.

The Kenya National Commission on Human Rights (v) was established in 2002 by the Kenya National Commission on Human Rights Act (2011). KNCHR is an autonomous watchdog body that monitors government institutions to promote human rights through carrying investigations of alleged violations in Kenya. KNCHR advises the Kenyan Government on how to enhance the promotion and protection of human rights. Human rights and disability rights experts have reported that the disability movement is well represented in KNCHR and includes three leading and experienced individuals specializing in advocacy and law who also were involved in drafting the CRPD.<sup>142</sup>

### Constitution of Kenya 2010

Kenya has a mixed legal system made up of English Common Law, Islamic Law, and customary law. The Constitution of Kenya 2010 states in Article 2(6) that any treaty ratified by Kenya becomes part of its federal law by virtue of its ratification (monist approach).<sup>143</sup> Accordingly, the CRPD is part of Kenyan law since May 29, 2008. Article 43 of the Constitution of Kenya 2010 states that "Every person has the right to a clean and healthy environment which includes the right to education,"<sup>144</sup> Article 53 states that "Every child has a right to a free and compulsory basic education"<sup>145</sup> And Article 54 of the 2010 Kenyan Constitution is specifically targeted towards persons with disabilities. Article 54 specifies that, "A person with any disability is entitled--- to access educational institutions and facilities for persons with disabilities that are integrated into society to the extent compatible with the interests of the person."<sup>146</sup> Further, Article 54 provides that "A person with any disability is entitled to reasonable access to all

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<sup>139</sup> See Education for All Flagship: The Right to Education for Persons with Disabilities (N.D.), <http://unesdoc.unesco.org/images/0013/001322/132277e.pdf>.

<sup>140</sup> United Nations Millennium Development Goal 2: Achieve Universal Primary Education, from <http://www.un.org/millenniumgoals/education.shtml> (last visited October 24, 2012).

<sup>141</sup> UNESCO Education, Eastern African High-Level Forum on Education for All (13-14 September), September 12, 2011, [http://www.unesco.org/new/en/education/resources/online-materials/single-view/news/eastern\\_african\\_high\\_level\\_forum\\_on\\_education\\_for\\_all\\_13\\_14\\_september/](http://www.unesco.org/new/en/education/resources/online-materials/single-view/news/eastern_african_high_level_forum_on_education_for_all_13_14_september/).

<sup>142</sup> NIDS/MSc Shia and Annika Nilsson, *Disability Rights in Kenya* (rev. Jan. 30, 2011), <http://www.msc.st/docs/HRBA-Disability-Kenya-revised-2011-01-30.doc>.

<sup>143</sup> KENYA CONST. (2010), pmbl, art. 2(6).

<sup>144</sup> *Id.* at pt. 1, art. 43(1)(f).

<sup>145</sup> *Id.* at pt. 3, art. 54(1)(c).

<sup>146</sup> *Id.* at pt. 3, art. 54(1)(b).

places, public transport and information; to use Sign language, to Braille or other appropriate means of communication; to access materials and devices to overcome constraints arising from the person's disability."<sup>147</sup>

#### Education Act and other related Educational Policy

The Education Act of 1968, amended in 1980, designated the Ministry of Education as the agency responsible for providing, promoting and coordinating lifelong education, training and research for Kenya's sustainable development. The Education Act also instituted various organs for the organization and management of education at all levels. The Ministry of Education includes six directorates: Basic Education, Higher Education, Technical Education, Quality Assurance and Standards, Policy and Planning, and Research Development. The Directorate of Basic Education is responsible for special needs education.

The Children's Act No. 8 was effective in April 2002, and requires the government to undertake all necessary steps to make available free basic education to every child, which shall be compulsory in accordance with the CRC. Said law also provides for the establishment of a National Council for Children's Services.

In 2003, Kenya introduced free and compulsory primary education for all children, and improved budgetary allocations EARC and institutions for students with special needs.

#### Persons with Disabilities Act, 2003

The Persons with Disabilities Act, 2003 (**Disabilities Act**), contains several articles related to the right to education for persons with disabilities and creates a National Council for Persons with Disability (KNCPWD) appointed by the Minister and comprised of members from the disability community and from the ministry (including education). One of the functions of the KNCPWD is "to achieve equal opportunities for persons with disabilities by ensuring to the maximum extent possible that they obtain education and employment..."<sup>148</sup> Article 7 also requires the KNCPWD to provide to make a provision for assistance to students with disabilities in the form of scholarships, loan programs, fee subsidies and other forms of assistance in both public and private institutions.<sup>149</sup>

Article 18 of the Disabilities Act specifically prohibits the denial of admission to a person with a disability to any course of study by reason only of such disability, if the person has the ability to acquire substantial learning in that course.<sup>150</sup> Article 18 also includes a provision for reasonable accommodations in education institutions stating that: "learning institutions shall take into account the special needs of persons with disabilities with respect to the entry requirements, pass marks, curriculum, examinations, auxiliary services, use of school facilities, class schedules, physical education requirements and other similar considerations."<sup>151</sup> The provision of "special schools" is also required for the deaf, the blind, and persons with intellectual disabilities to

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<sup>147</sup> *Id.* at pt. 3, art. 54(1)(c)(d)(e).

<sup>148</sup> Kenya Persons with Disabilities Act (2003), art. 7(1)(b)(i).

<sup>149</sup> *Id.* art. 7(1)(f).

<sup>150</sup> *Id.* art.18(1).

<sup>151</sup> *Id.* art. 18(2).

**Table 10: Kenya - Relevant Domestic Education Legislation & Policy**

**Children's Act No. 8**

- Requires government to take necessary steps to make free basic compulsory education available to every child.

**Education for All Policy 2003**

- Requires government to take necessary steps to make free basic education available to every child, and improve budgetary allocations for Education Assessment Resource Centers and institutions for students with special needs.

**Persons with Disabilities Act 2003**

- **Article 7:** Created National Council for Persons with Disabilities. One of the Council's functions is to achieve equal opportunities for persons with disabilities by ensuring to the maximum extent possible that they obtain education and employment.
- **Article 18:** Specifically prohibits the denial of admission to persons with disabilities to any course of study by reason only of such disability, if the person has the ability to acquire substantial learning in that course. Requires that learning institutions take into account special needs of persons with disabilities with respect to the entry requirements, pass marks, curriculum, examinations, auxiliary services, use of school facilities, class schedules, physical education requirements and other similar considerations.
- **Article 19:** Requires Council to work with relevant government agencies to make provisions in all districts for an integrated system of special and non-formal education for persons with all forms of disabilities and the establishment of Braille and recorded libraries for persons with visual disabilities where possible.

**Special Needs Education Policy 2009**

- Recognizes special needs education as crucial to reaching EFA goals. Employs Ministry of Education to implement assessments and interventions, curriculum development, capacity building and human resource development, advocacy and awareness, and research and documentation. Also calls for creation of comprehensive annual monitoring and evaluation framework to ensure policy is being implemented.

**Constitution 2010**

- **Article 2(6):** Any treaty or convention ratified by Kenya becomes part of its federal law.
- **Article 43:** Every person has a right to a clean and healthy environment which includes the right to education.
- **Article 53:** Every child has a right to a free and compulsory basic education.
- **Article 54:** A person with a disability is entitled to access educational institutions and facilities for persons with disabilities that are integrated into society to the extent compatible with the interests of the person. A person with any disability is entitled to reasonable access to all places, public transport and information; to use Sign language, Braille or other appropriate means of communication; and to access materials and devices to overcome constraints arising from the person's disability.

**Proposed Legislation: Basic Education Bill 2012**

- Comprehensive education law, with many protections and provisions for students with disabilities that include: specific prohibitions of discrimination, consequences for parents and employers who prevent children from attending school, adequately trained teachers and staff, appropriate learning materials and equipment, and authority to create regulations to enforce academic and curricular standards that promote the education of students with disabilities. Passed by cabinet, currently under review.



“cater for formal education, skills development and self-reliance.”<sup>152</sup> Article 19 requires the Council to work with relevant government agencies to make provisions in all districts for an integrated system of special and non-formal education for persons with all forms of disabilities and the establishment of Braille and recorded libraries for persons with visual disabilities where possible.<sup>153</sup>

### Basic Educational Bill

In May of 2012, a Basic Educational Bill (Draft Educational Bill) was drafted to give effect to Article 53 of the Constitution and other enabling provisions to promote and regulate free compulsory education to children among other purposes. This Draft Educational Bill was approved by the cabinet in August 2012, and according to Kenya Law Reports’ Bill Tracker 2012, it is still undergoing review. If the Draft Educational Bill becomes part of federal law, it could strengthen the current legal framework and advance the implementation of inclusive education in Kenya. Clause 4 of the Draft Educational Bill provides a right to free and compulsory basic education, equitable access to education, protection of children against unfair discrimination within or by an educational entity, and specific non-discrimination, protection, and encouragement of marginalized children including those with disabilities.<sup>154</sup>

The Draft Educational Bill provides sanctions where parents or employers prevent children from attending school. Said sanctions are intended to incentivize enrollment in schools. Under Clause 29(2) where a parent defaults on his or her responsibility to have their child admitted to a basic education institution, the parent or guardian shall be deemed to have committed an offense and is liable to punishment (prescribed under regulation, see Part XII of the Bill).<sup>155</sup> Similarly, in Clause 35, any persons who employs or prevents a child subject to compulsory attendance from attending school is also guilty of an offense and is liable to a fine not exceeding 5 million or to a period not exceeding 5 years or both.<sup>156</sup>

Part VI of the Draft Educational Bill is focused on special needs education, and provides for special needs education in special schools or in primary and secondary schools suitable to the student with a disability.<sup>157</sup> This part of the Draft Educational Bill is important in that it requires that some kind of education should be provided for students with disabilities, however, it also still allows for the segregation of students with disabilities in special schools, and does not specify the process or determination for placement of a child in a special needs school or a regular school. Additionally, there is no apparent incentive to transition students from special schools to regular schools. These aspects of the Draft Educational Bill are not in line with the requirements of the CRPD under Article 24.

Clause 41 of the Draft Educational Bill requires that every special school or educational institution with students with disabilities is provided with appropriately trained teachers, non-

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<sup>152</sup> *Id.* art. 18(3).

<sup>153</sup> *Id.* art. 19.

<sup>154</sup> Kenya Basic Education Bill (2012), pt. I, cl. 4.

<sup>155</sup> *Id.* pt. IV, cl. 29(2).

<sup>156</sup> *Id.* pt. IV, cl. 35(2).

<sup>157</sup> *Id.* pt. V, cl. 41(3).

teaching staff, infrastructure, learning materials, and equipment suitable for students with disabilities.<sup>158</sup> Clause 42 of the Draft Educational Bill states that the Cabinet Secretary may adopt regulations for the establishment and management of special schools and institutions offering special needs education, and gives specific guidance on the type of regulations that should be adopted including requirements pertaining to duration, learning and progression, conduct, curricula, categories of pupils, guidelines for promotion of education of children with disabilities, and mechanisms to ensure every school has appropriate personnel, infrastructure, learning materials and equipment.<sup>159</sup> Clause 43 of the Draft Educational Bill places a duty with every County Education Board to provide EARCs that would help advise county educational boards, parents, teachers, students with disabilities, provide educational needs in clinics.<sup>160</sup> Clause 44 of the Draft Educational Bill also obliges the County Educational Board to consider what provisions might benefit students with disabilities after the completion of basic education, and make reports to the relevant Director.<sup>161</sup> The tools and resources referenced in these provisions are crucial to ensure the evaluation of the performance of students to measure the quality of education they are receiving in special or inclusive schools.

Part XII of the Draft Educational Bill provides for penalties for those who commit an offense under said Bill,<sup>162</sup> an Education Appeals Tribunal,<sup>163</sup> and the authority for various entities to adopt regulations to implement the Bill.<sup>164</sup> Remedies, penalties, and regulations are integral to moving inclusive education from the policy level to an applied practice in the Kenyan Education System.

## **Implementation**

The Government of Kenya has recently made good progress to promote and implement inclusive education particularly, with the creation of the Draft Education Bill. However, there is still room for improvement.

For example, in 2008 a news article reported that since Kenya adopted EFA free and compulsory primary education policy, a rapid increase in enrollment of students has occurred. However, as the numbers of enrollment have swelled, school classrooms and teaching staff have remained the same (by 2008 the number of new teachers only increased by 2.6 percent<sup>166</sup>) which has led to overcrowded classrooms and overall lower quality of education.

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<sup>158</sup> *Id.* pt. V, cl. 41(4).

<sup>159</sup> *Id.* pt. VI, cl. 42.

<sup>160</sup> *Id.* pt. VI, cl. 43.

<sup>161</sup> *Id.* pt. VI, cl. 44.

<sup>162</sup> *Id.* pt. XI, cl. 89.

<sup>163</sup> *Id.* pt. XII, cl. 90.

<sup>164</sup> *Id.* pt. XII, cl. 91.

<sup>165</sup> See Kenya Law Reports: Bill Tracker 2012, KNA #51, <http://www.kenyalaw.org/klr/index.php?id=98> (last visited October 24, 2012).

<sup>166</sup> Najum Mushtaq, *Kenya: Failing Grade for Free Primary Education?*, INTER PRESS SERVICE NEW AGENCY (October 16, 2008), <http://www.ipsnews.net/2008/10/kenya-failing-grade-for-free-primary-education/> (last visited October 24, 2012).

Even with the increase in enrollment of students due to Kenya's commitment to achieving EFA through its implementation of the Free Primary education program, some one million school age children are still out of school. These children include children with disabilities, children impacted by HIV/AIDS, and children residing in urban slums. An Education Needs Assessment states that some children who are not able to access education in conflict-affected areas include children with disabilities because there are no special needs schools in the area and they are perceived by parents to be safer at home.<sup>167</sup> In 2008, there were 1341 special units and 114 public special schools in Kenya which include vocational and technical institutions.<sup>168</sup> According to a UNDP report, only 26,000 or 1.7 percent of an estimated 1.5 million children with disabilities have access to some form of education.

Remaining challenges to implementing inclusive education include: a lack of clear guidelines on how to implement inclusive education policy, a lack of reliable data on students with disabilities and inadequate identification and assessment tools. Other barriers include: overall teacher shortage, lack of teachers trained to implement inclusive education, lack of adequate curriculum and educational resources to meet the needs of children with disabilities, physical and informational inaccessibility of general education and special schools, long distances to school, and the negative stigma of disability in Kenyan society.

The Draft Education Bill and the Special Needs Education Policy of 2009 both provide authority for an effective potential framework to implement inclusive education. It is unclear, however, what remedies a student with a disability or their parents can seek if they are being denied access to an inclusive education setting or being discriminated against on the basis of their disability. Additionally, while legal and policy frameworks are helpful in granting schools and students rights and obligations, detailed regulations have to be adopted to implement said laws and policies and provide specific guidance for their application.

Moreover, better data collection and assessment on the current status of students with disabilities in the Kenyan Education system needs to take place. While EARCs have been established in 72 out of 149 districts to facilitate the identification, assessment, referrals and placement of children with disabilities, most have failed to reach children with disabilities or to assist them properly.<sup>169</sup>

The UNESCO World Data Report on Kenya stated that specialized syllabuses have been developed in the area of visual impairments and physical disabilities such as cerebral palsy. It also added that guidelines have been developed for teaching this syllabus and imparting specialized skills such as Braille, orientation, mobility, and activities of daily living.<sup>170</sup> Many students with visual disabilities are taught alongside their peers in general schools and receive special instructions. The policy is that for every class, there should be no integration of more

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<sup>167</sup> A. Nzimbi & G. Komora, *Education Needs Assessment Report Conflict Hit Areas of Baringo County*, 5 (July 2012).

<sup>168</sup> National Special Needs Education Policy Framework, 2009.

<sup>169</sup> Samuel Otieno Wanyera, *Collaboration between parents and education al assessment teachers and challenges faced at the centres in a Kenya city center* (2004), <http://www.duo.uio.no/sok/work.html?WORKID=18775> (last visited October 24, 2012).

<sup>170</sup> UNESCO World Data on Education: Kenya, *supra* note 117.

than three learners with visual impairments, for easy services.<sup>171</sup> There is also a government educational policy for sign language to become an official language to cater to students with hearing disabilities. As a result, sign language was introduced in primary and secondary schools in January 2007 and was expected to be a part of the exam for the Kenya Certificate of Secondary Education (KCSE) level for the first time in 2010.<sup>172</sup> The development of specialized syllabi for students with disabilities and Braille and sign language instruction in the general education classroom are steps towards inclusive education practice.

Also, not all children with disabilities have access to special schools. Special schools and units in Kenya are only available for children with hearing, visual, mental, or physical disabilities. Therefore students with psychosocial disabilities, autism, multiple disabilities, and those with specific learning and communication disabilities are left behind.<sup>173</sup>

The stigma of disability in Kenya is a major barrier to implementing inclusive education as many still see disability as burdensome, shameful, or even a curse.<sup>174</sup> A report examining attitudinal and intuitional barriers that persons with disabilities face revealed that 74 percent of persons with disabilities reported as having been denied the right to make decisions on issues that affect their lives, and 86 percent felt they were being discriminated against by society and their own families.<sup>175</sup> Seventy-two percent of persons with disabilities in this study felt that abuse and discrimination they faced originated from a negative attitude towards persons with disabilities that prevailed in Kenyan society.<sup>176</sup> Because of this stigma, many parents do not send their disabled child to school. One advocated has reported that “most fathers with disabled children have walked out of their families because they believe that disability is a curse.”<sup>177</sup>

## **Recommendations**

### **Law, policy and institutional reforms**

- **Ensure timely and detailed reporting to the CRPD Committee.**
- **Adopt Draft Education Bill .** The Draft Education Bill should be adopted and the SNE policy should be implemented through the adoption of implementing regulations. Said regulations should clarify, namely, remedies and accessible due process system for students with disabilities seeking redress in cases of discrimination including physical or informational inaccessibility, or unequal treatment based on disability, lack of adequate support and services for students with disabilities, and a failure to provide reasonable accommodation.

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<sup>171</sup> *Id.*

<sup>172</sup> *Id.*

<sup>173</sup> See Njoka et al., *supra* note 113 at 30.

<sup>174</sup> See Macha et al., *supra* note 111 at 43.

<sup>175</sup> *Id.* at 49.

<sup>176</sup> *Id.* at 49.

<sup>177</sup> Ruth Omukhango, *Double Tragedy for those with Disabilities*, 064 REJECT 2, (June 15-30, 2012), [http://mdcafrica.org/documents/reject/Reject\\_064.pdf](http://mdcafrica.org/documents/reject/Reject_064.pdf).

- **Improve coordination of all actors dealing with disability issues.** Responsibility for coordination of inclusive education should rest within a single ministry. In addition, all disability issues should ideally fall within the responsibility of a single governmental coordinating entity. Coordination among all stakeholders, governmental as well as DPOs, research institutes, and other NGOs should be improved in order to promote coherency and consistency in regulations, policy, and monitoring mechanisms that reflect the goals of inclusion of PWD.

### **Resource allocation for inclusive education**

- **Allocate resources to inclusive education.** Funding must be directed towards inclusive education goals; and the receipt of funding to schools should be linked to implementation of inclusive education practices and enrollment, completion, and employment outcomes for students with disabilities.
- **Allocate resources for improving information accessibility within all schools.** Plans to improve accessibility must be adopted, with sufficient resource allocation to achieve accessibility progressively.
- **Allocate resources for improving information accessibility within all schools.** Plans to improve accessibility must be adopted, with sufficient resource allocation to achieve accessibility progressively.
- **Allocate resources for improving public transportation accessibility.** Plans to improve accessibility must be adopted, with sufficient resource allocation to achieve accessibility progressively.

### **Disability data collection**

- **Introduce accurate data gathering on disability and the education of children with disabilities.** Data and statistics are not currently gathering in any ongoing and consistent fashion and are therefore required in order to track progress & implementation of inclusive education for persons with disabilities.

### **Teacher Training and Curriculum**

- Incorporate special needs education training into general education curricula for teachers. Recruit teachers with disabilities and create special scholarships for students with disabilities in secondary and tertiary education to incentivize completion.

### **Access to Justice to Protect the Right to Inclusive Education**

- Remedies and accessible due process procedures should be put in place for students with disabilities in cases of discrimination, including physical or informational

inaccessibility, or unequal treatment based on disability, lack of adequate support and services for students with disabilities, and the failure to provide reasonable accommodations.

**Implement Disability Awareness-raising**

- **Create public service & awareness campaigns** dedicated at all youth promoting inclusion of persons with disabilities to combat stigma.

**Consultation with persons with disabilities through their representative organizations.**

- DPOs should be involved in the further development of inclusive education related law, policy and regulations, including the Draft Education Bill, as well as teacher curricula requirements.

# ***Rwanda***

## **General Background**

A 2012 July estimate of the total population of Rwanda is 11,689,696 people—the most densely populated country in Africa.<sup>178</sup> The literacy rate of Rwanda is approximately 71 percent.<sup>179</sup> The official languages are Kinyarwanda, French, and English. Kiswahili is also widely used.<sup>180</sup> There are estimated to be approximately 55,000 Congolese refugees as of 2010, while the number of IDPs is unknown.<sup>181</sup> The National Assistance Fund for Need Survivors of Genocide and Massacres in Rwanda (FARG)’s Executive Secretary said, “All of our survivors, I suppose, are disabled” and a FARG survey estimated that 300,000 of the genocide survivors were disabled.<sup>182</sup> The Rwandan Ministry of Social Affairs in 2007 estimated that there were between 300,000 and 400,000 survivors total.<sup>183</sup> Because of the genocide, Rwanda has the highest level of PTSD within the region; approximately 39 percent of the total population has reported having PTSD.<sup>184</sup>

Rwanda is ranked 25<sup>th</sup> in the world with an HIV/AIDS prevalence rate of 2.9 percent and 31<sup>st</sup> in the world for the number of people living with HIV/AIDS at 170,000 people. Rwanda is ranked 43<sup>rd</sup> in the world for HIV/AIDS related deaths. Those age 12-14 years of age have an HIV/AIDS prevalence rate of 4 percent.<sup>185</sup> Approximately 13 percent of people with disabilities in Rwanda have been infected with HIV/AIDS.<sup>186</sup>

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<sup>178</sup> Central Intelligence Agency. *The World Factbook: Rwanda* (October 16, 2012), <https://www.cia.gov/library/publications/the-world-factbook/geos/rw.html> (last visited October 26, 2012) [hereinafter CIA Factbook Rwanda].

<sup>179</sup> *Id.*

<sup>180</sup> *Id.*

<sup>181</sup> *Id.*

<sup>182</sup> Phillipa Thomas, DFID, *Mainstreaming Disability in Development: Country –Level Research, Rwanda Country Report* (April 2005), 29; 17-18, [http://www.dfid.gov.uk/r4d/PDF/Outputs/Disability/PolicyProject\\_rwanda.pdf](http://www.dfid.gov.uk/r4d/PDF/Outputs/Disability/PolicyProject_rwanda.pdf).

<sup>183</sup> *Rwanda/Genocide – Census: Rwanda Genocide Survivors Estimated to be 300,000*, HIRONDELLE NEWS AGENCY (August 8, 2008), <http://www.hirondellenews.org/ictr-rwanda/412-rwanda-political-and-social-issues/22237-en-en-280808-rwandagenocide-census-rwanda-genocide-survivors-estimated-to-be-3000001128811288>. The Rwandan Ministry of Social Affairs 2007 census estimates the number to be 309,368. IBUKA (the umbrella body of survivors’ organisations in Rwanda) estimates the number to be closer to 400,000. Cite?

<sup>184</sup> Ntazinda Badege Sam, *Rwanda Country Specific Report on Human Rights of Persons with Psychosocial Disabilities*, 3, presented in the training “The development of leadership and networking of persons with disabilities,” Tokyo, Japan, October 12-December 2, 2011, [http://www.jicafriends.jp/leaders/pdf/12011personal\\_rwanda0202.pdf](http://www.jicafriends.jp/leaders/pdf/12011personal_rwanda0202.pdf).

<sup>185</sup> Federal Associations and Centres of the Handicapped in Rwanda (FACHR), *AIDS and Disability Rwanda*, 9 (2003) (unpublished report), <http://www.fru.se/images/19.pdf>.

<sup>186</sup> *Id.* at 20.

**Table 11: Rwanda - Relevant Domestic Education Legislation & Policy**

**Constitution 2003 (Amended in 2010)**

- **Article 11:** Specifically prohibits discrimination based on physical or mental disability (along with other protected classes) and deems such behavior punishable by law.
- **Article 14:** Requires the State to take special measures for the welfare of the survivors of genocide including people with disabilities, the indigent, the elderly and other vulnerable groups.
- **Article 40:** Guarantees that every person has a right to education, and that freedom of learning and teaching is guaranteed in accordance with conditions determined by law. Renders primary education compulsory and free in public schools, and obligates state to take special measures to facilitate the education of persons with disabilities.

**Law N° 47/2001 of 18/12/2001 Instituting Punishment for Offenses of Discrimination and Sectarianism**

- Criminalizes acts of discrimination defined as “any speech, writing, or actions based on ethnicity, region or country of origin, colour of skin, physical features, sex, language, religion or ideas aimed at depriving a person or group of persons of their rights as provided by Rwandan law and by International Conventions to which Rwanda is a party.”

**Education Sector Plan 2004-2008**

- Obligates Ministry of Education, Science, Technology and Scientific Research (MINEDUC) to develop a policy on special education needs (SEN) which includes requirements for improvement at each level of education.

**National Policy for Children with Special Education Needs**

- Recognizes challenges in expanding the provision of special needs education facilities and training according to levels of disabilities while promoting inclusion within existing schools where feasible. Indicates that students with disabilities require additional support or special provisions to enable them to access and complete their education.

**Law to Protect Persons with Disabilities (2007)**

- **Article 11:** Requires the government to provide people with disabilities who are “not able” to study with others with modalities to study in specialized schools with qualified teachers and appropriate equipment. Includes obligation of the Minister of Education to determine modalities of facilitating people with disabilities in either regular schools and in specialized schools.
- **Article 12:** Allows for students with disabilities who require accommodations for exams, the right to sit for exams in a “special manner”.
- **Article 13:** Requires that the Minister in charge of education to determine how people with disabilities can pursue education.

**Government Programme 2010-2017**

- Promises to promote quality education and to create special department in charge of training special education teachers at Kigali Institute of Education and in Teacher Training Centers. Also promises to enhance inclusive programme through increasing the number of schools capable to teaching students with disabilities.



A 2002 Household census estimates that people with disabilities comprise 3.9 percent of the national population (308,501).<sup>187</sup> However a more recent census in 2010 by the Ministry of Health and the Ministry of Local Government and Social Affairs estimated the population of people with disabilities to be approximately 5 percent (522,856: 263,928 females and 258,928 males).<sup>188</sup> Both of these figures are mostly likely under representative of the total number of people with disabilities living in Rwanda.<sup>189</sup> The main causes of disability include genocide and war, poverty and malnutrition, poor health care, disease, accidents, and congenital causes.<sup>190</sup>

## Overview of Education System

Rwanda's total education expenditure makes up 4.1 percent of its GDP.<sup>191</sup> The Department of Education in Rwanda is divided into two administrative bodies: Central and Local Government. The central administrative body is responsible for monitoring and evaluating all school activities. The central government also includes the National Curriculum Development Centre (NCDC) whose mission is to "to design, develop, experiment and disseminate early childhood education, teaching primary and secondary design, develop, test and disseminate guides and books for teachers and students to design, adapt and test methods teaching, design, produce and promote other educational materials the manuals, and design, conduct and disseminate educational journal."<sup>192</sup> The General Inspectorate of Education is also part of the central administrative body and is responsible for developing standards of education, monitoring the implementation of educational standards, and preparing guidelines and for disseminating education policy and laws and monitoring their implementation in the districts.<sup>193</sup>

In Rwanda there are approximately 30 districts divided into 416 sectors.<sup>194</sup> Each school has a general assembly which his responsible for providing advice and suggestions for overall development and reviewing and approving budgets.<sup>195</sup> Each district has a Board of Education

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<sup>187</sup> National Institute of Statistics in Rwanda, Census of Population and Housing, TA10 (2002), <http://www.statistics.gov.rw/publications/third-general-census-population-and-housing-rwanda-final-results-statistical-tables>.

<sup>188</sup> VSO Rwanda Disability Programme Overview, Facts and Figures, 1 (June 2012), [http://www.vso.org.uk/Images/Rwanda-disability-overview-June-2012\\_tcm79-37209.pdf](http://www.vso.org.uk/Images/Rwanda-disability-overview-June-2012_tcm79-37209.pdf).

<sup>189</sup> World Health Organization (WHO), World Report on Disability, 29 (2011), [http://whqlibdoc.who.int/publications/2011/9789240685215\\_eng.pdf](http://whqlibdoc.who.int/publications/2011/9789240685215_eng.pdf). The WHO estimates that 15% of the world's population lives with a disability.

<sup>190</sup> *AIDS and Disability Rwanda*, *supra* note 185 at 19.

<sup>191</sup> CIA World Factbook Rwanda, *supra* note 178.

<sup>192</sup> Republic of Rwanda Law No. 52/2007 of 04/10/2007 Establishing the National Development Curriculum Centre (NDCD), chap. II, art. 4, *available at* [http://www.amategeko.net/display\\_rubrique.php?ActDo=ShowArt&Information\\_ID=2201&Parent\\_ID=30699388&type=public&Langue\\_ID=An&rubID=30699395#30699395](http://www.amategeko.net/display_rubrique.php?ActDo=ShowArt&Information_ID=2201&Parent_ID=30699388&type=public&Langue_ID=An&rubID=30699395#30699395).

<sup>193</sup> United Nations Educational, Scientific and Cultural Organization (UNESCO), World Data on Education: Rwanda, 7th ed. (2010/11) (rev. October 2010), [http://www.ibe.unesco.org/fileadmin/user\\_upload/Publications/WDE/2010/pdf-versions/Rwanda.pdf](http://www.ibe.unesco.org/fileadmin/user_upload/Publications/WDE/2010/pdf-versions/Rwanda.pdf).

<sup>194</sup> *Id.*

<sup>195</sup> *Id.*

that participates in promoting and advising regarding the construction and maintenance of schools and their equipment, reviewing reports of the General Assemblies, assisting with staffing decisions, and reporting activities to the District Council or the City.<sup>196</sup>

In 2007, approximately 40 percent of the teachers in Rwanda had fewer than five years of teaching experience.<sup>197</sup> In 2008, the number of qualified teachers increased to 99 percent, however only 36 and 33 percent were qualified for lower and upper secondary school.<sup>198</sup> Most teachers are poorly paid, and as a result only 10 percent of the total teacher respondents have undergone qualification upgrading to attain higher qualifications for teaching in Rwanda.<sup>199</sup>

There are 4 stages of education: Nursery, Primary, Secondary, and Tertiary. Nursery education is organized in a single cycle of 3 years and admits children ages 3 to 6 years old.<sup>200</sup> While the government provides curricula, teaching aid, and training teachers, the responsibility to start and run a nursery school lies with the parents.<sup>201</sup> Primary school education is compulsory and free in both public and government aided schools, and begins at age 7. Free education refers to free access to learning, teaching aids and basic textbooks for pupils and teachers.<sup>202</sup> Primary and Secondary school each run for six years. Primary education consists of two cycles, with the first cycle emphasizing learning how to read, write, and calculate. During this phase, all instruction is in Kinyarwanda, except for the lessons of foreign languages.<sup>203</sup> Teachers of primary schools require a teaching qualification certificate, and in every primary school, a “Teachers’ Committee” has to be established and is responsible for deciding on promotion or repetition of pupils, overseeing discipline, and dealing with all other issues related to teaching and learning at school.<sup>204</sup>

The second general cycle starts from primary four to primary six. When a student completes primary education and passes the national examination, they are awarded a certificate, and a passing mark is determined by the National Examinations ‘Council at primary and secondary levels.<sup>205</sup> Secondary education is composed of a general education cycle that lasts 3 years and second cycle that lasts two or three years. Entry into secondary school is based on

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<sup>196</sup> *Id.*

<sup>197</sup> The World Bank, Rwanda Education Country Status Report, 113 (2011), [http://www-wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2010/11/29/000350881\\_20101129112950/Rend ered/PDF/579260SR0P11151353788B01PUBLIC10Web.pdf](http://www-wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2010/11/29/000350881_20101129112950/Rend ered/PDF/579260SR0P11151353788B01PUBLIC10Web.pdf).

<sup>198</sup> *Id.* at 112.

<sup>199</sup> *Id.* at 124.

<sup>200</sup> Republic of Rwanda Law No. 29/2003 of 30/08/2003 Establishing the Organisation and the Functioning of Nursery, Primary and Secondary schools, chap. III, § I, art. 26, *available at* [http://www.mineduc.gov.rw/IMG/pdf/GOVERNING\\_THE\\_ORGANISATION\\_AND\\_FUNCTIONING\\_OF\\_HIGH\\_ER\\_EDUCATION.pdf](http://www.mineduc.gov.rw/IMG/pdf/GOVERNING_THE_ORGANISATION_AND_FUNCTIONING_OF_HIGH_ER_EDUCATION.pdf).

<sup>201</sup> *Id.* at chap. III, § I, art. 27.

<sup>202</sup> *Id.* at chap. I, art. 2.

<sup>203</sup> *Id.* at chap. IV, § I, art. 34.

<sup>204</sup> *See id.* at chap. IV, § I, art. 36; § II, art. 37.

<sup>205</sup> *Id.* at chap IV, § I, art. 32.

examination scores and most primary students do not continue on to secondary school. Families are required to pay school fees and to purchase school uniforms in order to enroll children in secondary school; however the Rwandan government will waive these fees for orphans.<sup>206</sup> At the end of secondary cycle, a student takes an examination and if they pass are awarded a Certificate or diploma.<sup>207</sup> The language of instruction during these years is either French or English.<sup>208</sup> Secondary schools are led by a Headmaster or Headmistress responsible for administration of the schools, and are assisted by other administrative personnel, teachers and supporting staff. Secondary school teachers must have at least a qualification of the first cycle of university for those who teacher in the first cycle of secondary schools, and a degree of the second or third cycle of university level for those who teach in the second cycle of secondary schools.<sup>209</sup>

The school management, together with the School General Assembly, is responsible for the smooth running of the school hostels, proper accommodation as well as the discipline and conduct of pupils.<sup>210</sup> Subjects in the second cycle of secondary education are covered in sections. Sections are determined by an Order of the Minister having secondary education in his or her portfolio. The Order of the Minister also determines criteria for promotion, repetition, or transfer of pupils. The school management together with the School General Assembly are responsible for the smooth running of the school hostels, proper accommodation as well as discipline and conduct of pupils.<sup>211</sup>

Special schools are established along impairment-specific lines. The administration and functioning of these schools are determined by a Presidential Order instituting general regulations governing education in nursery, primary and secondary schools. According to the law that establishes the organization of general education and special schools (LAW N° 29/2003 OF 30/08/2003 Establishing the Organization and the Functioning of Nursery, Primary, and Secondary Schools)<sup>212</sup> Article 51 of this law provides that. “When the obstacles that prevented a pupil from attending ordinary schools are overcome, he or she shall resume an ordinary school.” It is unclear from a plain reading of the law whether this removal is referring to a barrier that the student would face in the general education setting or whether the law is referring to the removal of a deficiency within the student. Curricula for special schools are established according to different levels, nature and structure of disabilities of pupils. Teachers of special education schools must be in possession of a professional teaching qualification in addition to special education training.

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<sup>206</sup> *Id.* at chap I, art. 3.

<sup>207</sup> *Id.* at chap. V, § I, art. 40.

<sup>208</sup> *Id.* at chap. V, § I, art. 43.

<sup>209</sup> *Id.* at chap V, § II, art. 48.

<sup>210</sup> *Id.* at chap. V, § I, art. 44.

<sup>211</sup> *Id.* at chap. V, § I, art. 41-45.

<sup>212</sup> LAW N° 29/2003 OF 30/08/2003 Establishing the Organization and the Functioning of Nursery, Primary, and Secondary Schools, [http://www.mineduc.gov.rw/IMG/pdf/GOVERNING\\_THE\\_ORGANISATION\\_AND\\_FUNCTIONING\\_OF\\_HIGHER\\_EDUCATION.pdf](http://www.mineduc.gov.rw/IMG/pdf/GOVERNING_THE_ORGANISATION_AND_FUNCTIONING_OF_HIGHER_EDUCATION.pdf)

## Law and Policy Framework

Rwanda has developed a legal framework that has the potential to implement inclusive education. Rwanda ratified the CRPD in December 2008, and the CRC in January 1991. Rwanda is committed to the East African Policy on mainstreaming disability.<sup>213</sup> Rwanda is an Ambassador Country for the African Decade of Persons with Disabilities 2010-2019, and within its National Programme,<sup>214</sup> has committed to increasing access to quality education for people with disabilities through the following seven objectives: implementing a Special Needs Education Policy; ensuring children with disabilities benefit from the Child-Friendly Schools initiative, reducing the number of children with disabilities who drop out of school and support the reintegration of those who do, increase the number of teachers with the ability to education and support students with disabilities, promoting partnerships between schools and parents of children with disabilities and parents with disabilities, ensuring the school facilities are accessible for children and staff with disabilities, increasing the teaching of Braille and RSL in schools, and increasing the literacy rate of people with disabilities.<sup>215</sup>

### Constitution of Rwanda

The Constitution of Rwanda contains protections of relevance for persons with disabilities and education. Article 11 of the Rwanda Constitution is an equality provision which prohibits discrimination based on physical or mental disability (along with other protected classes) and makes such treatment punishable by law.<sup>216</sup> Article 14 requires the State to take special measures for the welfare of the survivors of genocide including people with disabilities, the indigent, the elderly and other vulnerable groups.<sup>217</sup> Article 40 guarantees that every person has a right to education, and that freedom of learning and teaching is guaranteed in accordance with conditions determined by law. Additionally, it renders primary education compulsory and free in public schools. Article 40 also obligates the State to “take special measures to facilitate the education of disabled people.”<sup>218</sup>

### Instituting Punishment for Offences of Discrimination

Rwandan legislation includes an act that criminalizes acts of discrimination which is defined as “any speech, writing, or actions based on ethnicity, region or country of origin, colour of skin, physical features, sex, language, religion or ideas aimed at depriving a person or group of persons of their rights as provided by Rwandan law and by International Conventions to

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<sup>213</sup> Press Release, East African Community CCPAD, EAC Conference on Persons with Disabilities Draws to a Close (February 20, 2010), [http://news.eac.int/index.php?option=com\\_content&view=article&id=186:pwds-conference-ends&catid=48:eac-latest&Itemid=69](http://news.eac.int/index.php?option=com_content&view=article&id=186:pwds-conference-ends&catid=48:eac-latest&Itemid=69).

<sup>214</sup> National Programme (2010-2019), *Rwanda: Ambassador Country for the African Decade of Persons with Disabilities* (modified April 12, 2012), [http://www.ipar-rwanda.org/index.php?option=com\\_docman&task=cat\\_view&gid=77&limit=50&limitstart=0&order=date&dir=ASC&Itemid=151](http://www.ipar-rwanda.org/index.php?option=com_docman&task=cat_view&gid=77&limit=50&limitstart=0&order=date&dir=ASC&Itemid=151).

<sup>215</sup> *Id.* at 8-14.

<sup>216</sup> REPUBLIC OF RWANDA CONST. (2003), art. 11.

<sup>217</sup> *Id.* at art. 14.

<sup>218</sup> *Id.* at art. 40.

which Rwanda is a party.<sup>219</sup> Penalties for persons who commit discrimination include a sentence between months and two years of imprisonment and/or a fine between 50,000 to 2 million Rwandan Francs.<sup>220</sup> If the offender is a government official, political party official, private official, or official in an NGO, the sentence is between 1-5 years of imprisonment and/or between 500,000 and 2 million Rwandan Francs.<sup>221</sup> An organization found guilty of discrimination could face a penalties ranging from suspension between 6 months and 1 year and/or fined between 5 million and 10 million Rwandan Francs.<sup>222</sup> While there should be a penalty for those who discriminate on the basis of disability such as fine, criminal sanctions may not be the most effective way to combat discrimination especially in the education context in Rwanda where there are already a shortage of teachers and education professionals.

### Law to Protect Persons with Disabilities

The 2007 Rwandan Law to Protect Persons with disabilities contains a Chapter on Education that gives people with disabilities “the right to appropriate education in respect of the nature or his or his disability.”<sup>223</sup> Article 11 of the Law requires the government to provide people with disabilities who are “not able” to study with others with modalities to study in specialized schools with qualified teachers and appropriate equipment.<sup>224</sup> Article 11 also includes an obligation of the Minister of Education to determine modalities of facilitating people with disabilities in either regular schools and in specialized schools.<sup>225</sup> Article 12 allows for students with disabilities who require accommodations for exams, the right to sit for exams in a “special manner.”<sup>226</sup> Article 13 of the Law also requires that the Minister in charge of education to determine how people with disabilities can pursue education.<sup>227</sup> These provisions, provided they are effectively implemented, provide the basis for legal protection in the context of education as well as other spheres.

### Education Sector Strategic Plan

The rights of people with disabilities to education are recognized in the Education Sector Strategic Plan 2004-2008 (MINEDUC 2003). This plan includes the requirement that the Ministry of Education, Science, Technology and Scientific Research (MINEDUC) develop a policy on special education needs (SEN) which includes requirements for improvement at each

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<sup>219</sup> Republic of Rwanda Law No. 47/2001 of 18/12/2001 Instituting Punishment for Offences of Discrimination and Sectarianism, chap. I, art. 1(1), available at <http://www.grandslacs.net/doc/4040.pdf>.

<sup>220</sup> *Id.* at chap. III, art. 5.

<sup>221</sup> *Id.*

<sup>222</sup> *Id.* at chap. III, art. 6.

<sup>223</sup> Republic of Rwanda Law No. 01/2007 of 20/01/2007 Relating to Protection of Disabled Persons in General, chap. 2, art. 11, available at [http://www.amategeko.net/display\\_rubrique.php?ActDo=ShowArt&Information\\_ID=2056&Parent\\_ID=30697991&type=public&Langue\\_ID=An&rubID=30698195#30698195](http://www.amategeko.net/display_rubrique.php?ActDo=ShowArt&Information_ID=2056&Parent_ID=30697991&type=public&Langue_ID=An&rubID=30698195#30698195).

<sup>224</sup> *Id.*

<sup>225</sup> *Id.*

<sup>226</sup> *Id.* at chap. 2, art. 12.

<sup>227</sup> *Id.* at chap. 2, art. 13.

level of education. At the primary level, 20 additional teachers were to be trained by 2008, two new centers on SEN created, and the development of an SEN component in teacher training colleges. At the secondary level, five secondary schools were to pilot SEN teaching with at least 5 SEN trained teachers at each school. Reports suggest that little progress has been made on these obligations.<sup>228</sup>

### National Policy for Children with Special Educational Needs

Part of the Education Sector Strategic Plan 2008-2012, the National Policy for Children with Special Educational Needs recognizes a major challenge in expanding the provision of special needs education facilities and training while promoting inclusion within existing schools where feasible.<sup>229</sup> This Plan indicates that students with disabilities require additional support or special provisions to enable them to access and complete their education. The Government of Rwanda has reported that this sector policy fulfills the national obligation to provide equal access to education under its own constitution as it “complements the general political nationally and international orientation of building fair and equal society which recognizes the value of every human being.”<sup>230</sup> Section 8.1.3 of the Plan lists the “integration of disabled children into the school system” as part of high quality accredited modular training programs in school management.

### Government Programme 2010-2017

A Government Programme 2010-2017 under Programme 6 on Education, Research, and Technology, undertakes to continue to promote the quality education and to create a special department in charge of training preprimary and special education specialized teachers at the Kigali Institute of Education and in Teacher Training Centres<sup>231</sup> and to enhance inclusive programme through increasing the number of schools capable of teaching students with disabilities.<sup>232</sup>

### **Implementation**

While Rwanda has made strides in creating national policies and laws that prohibit discrimination against students with disabilities and to some extent promote inclusive education, the implementation of these efforts lag behind. Reasons for the lack of implementation include teacher shortages, inaccessible schools, a stigma of disability, an underwhelming amount of attention by the ministry to monitor and report the progress of students with disabilities, and an overall lack of accurate statistics. The legislative framework still allows for the existence of both special and inclusive schools, and does not effectively promote the transition of students from a segregated setting to an inclusive one. Additionally, while there are sanctions for discrimination

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<sup>228</sup> Republic of Rwanda, Ministry of Education, Science, Technology and Scientific Research (MINEDUC), Education Sector Strategic Plan 2004-2008 (October 2003), <http://planipolis.iiep.unesco.org/upload/Rwanda/Rwanda%20ESSP%202004-2008.pdf>.

<sup>229</sup> Republic of Rwanda, Ministry of Education, Education Sector Strategic Plan 2008-2012, 3, [http://www.mineduc.gov.rw/IMG/pdf/ESSP\\_2008-2012\\_August\\_2008\\_final\\_-\\_final.pdf](http://www.mineduc.gov.rw/IMG/pdf/ESSP_2008-2012_August_2008_final_-_final.pdf).

<sup>230</sup> *Id.* at 16-17.

<sup>231</sup> Republic of Rwanda Government Programme 2007-2017, Para 215

<sup>232</sup> Republic of Rwanda Government Programme 2007-2017, Para 216

in Rwandan law, there is no apparent due process system for a student with a disability or their parents to pursue when seeking remedies to address discrimination in the school system.

A common barrier to implementation of existing inclusive education legal framework and Article 24 of the CRPD is persistent disability stigma in Rwandan culture. Historically, people with disabilities in Rwanda have been excluded from mainstream society, and children with disabilities have been hidden from the public or even abandoned by their parents. Too often children with disabilities are seen as a source of shame for their family, and are often neglected and malnourished. Terminology serves as an indicator of stigma: the word for a person with a disability is “iki-muga” which means “a worthless, broke piece of pot.”<sup>233</sup>

While there are a handful of special schools that provide unique education experiences for students with disabilities, systems of special schooling are expensive and often require children to live away from home and segregated from their peers without disabilities. Additionally, the SN Department estimates that only a half of a percent of children with disabilities can be educated in the current special school system.

There is currently a lack of information or training for teachers to make sure that the students with disabilities in mainstream schools are receiving a quality education. Consequently many children with disabilities are forced to drop out or leave schools because they have had to repeat the same grade several times. In 1999 and 2000, MINEDUC worked with UNESCO to provide a report that critically examined the current status of students with disabilities in education in Rwanda. The report made recommendations to develop a SEN policy, to train SEN teachers, to strengthen the SN Division, to develop a pilot inclusive education programme, and to establish a SEN unit in the Kigali Institute of Education (KIE). As of 2005 only the SEN unit recommendation had been implemented.

Rwanda should be applauded for their efforts as a part of the larger East African Community in the promotion of inclusive education; however there is still much work to be done in order to ensure that students with disabilities have full and effective access to inclusive education.

## **Recommendations**

### **Law, policy and institutional reforms**

- **Ensure timely and detailed reporting to the CRPD Committee.**
- **Undertake ongoing law and policy review. A strategy to decriminalize penalties for disability discrimination** and its replacement with awareness raising through mandatory disability rights classes, and reforms in policy to encompass fines, and job probation, suspension, or termination will yield better results than the current unenforced and ineffective criminalization system.
- **Develop regulations for effective enforcement.** Regulations are required to clarify remedies and accessible due process system for students with disabilities seeking redress in cases of discrimination including physical or informational inaccessibility,

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<sup>233</sup> See *supra* note 188.

or unequal treatment based on disability, lack of adequate support and services for students with disabilities, and a failure to provide reasonable accommodations.

- **Improve coordination of all disability related ministries.** Improve coordination of the MOE and key stakeholders. Responsibility for coordination of inclusive education should remain within a single ministry. In addition, all disability issues should ideally fall within the responsibility of a single governmental coordinating entity. Coordination among all stakeholders, governmental as well as DPOs, research institutes, and other NGOs should be improved in order to promote coherency and consistency in regulations, policy, and monitoring mechanisms that reflect the goals of inclusion of PWD.

### **Resource allocation for inclusive education**

- **Allocate resources to inclusive education.** Funding must be directed towards inclusive education goals; and the receipt of funding to schools should be linked to implementation of inclusive education practices and enrollment, completion, and employment outcomes for students with disabilities.
- **Allocate resources for improving physical accessibility of all schools.** Physical accessibility of schools presents major barriers for students with physical disabilities. Plans to improve accessibility must be adopted, with sufficient resource allocation to achieve accessibility progressively.
- **Ensure new school accessibility.** New schools should be built for accessibility for all students with disabilities. This approach is consistent with the CRPD and is also far more economically viable as it is less costly to incorporate accessible design elements prior to construction rather than retrofitting schools after they are already built.
- **Allocate resources for improving information accessibility within all schools.** Plans to improve accessibility must be adopted, with sufficient resource allocation to achieve accessibility progressively.
- **Allocate resources for improving public transportation accessibility.** Plans to improve accessibility must be adopted, with sufficient resource allocation to achieve accessibility progressively.

### **Disability data collection**

- **Introduce accurate data gathering on disability and the education of children with disabilities.** Data and statistics are not currently gathering in any ongoing and consistent fashion and are therefore required in order to track progress & implementation of inclusive education for persons with disabilities.



### **Teacher Training and Curriculum**

- Incorporate “special needs” education training into general education curriculum for teachers as set out in part by the Education Sector Strategic Plan 2004-2008. Recruit teachers with disabilities and create special scholarships for students with disabilities in secondary and tertiary education to incentivize completion.

### **Access to Justice to Protect the Right to Inclusive Education**

- Remedies and accessible due process procedures should be put in place for students with disabilities to access in cases of discrimination, including physical or informational inaccessibility, or unequal treatment based on disability, lack of adequate support and services for students with disabilities, and the failure to provide reasonable accommodations.

### **Implement Disability Awareness-raising**

- **Create public service & awareness campaigns** dedicated at all youth promoting inclusion of persons with disabilities to combat stigma.

### **Consultation with persons with disabilities through their representative organizations.**

- DPOs should be involved in the further development of inclusive education related law, policy and regulations, including the Draft Education Bill, as well as teacher curriculum requirements.

# *Tanzania*

## **General Background**

Tanzania has a population of 46,912,768.<sup>234</sup> Persons with disabilities make up approximately 7.8 percent of the population.<sup>235</sup> According to the latest disability survey from 2008, mainland Tanzania has slightly more persons with disabilities than Zanzibar.<sup>236</sup> The prevalence is also somewhat higher in the rural areas. Tanzania has an 87.4 percent literacy rate,<sup>237</sup> and persons with disabilities living in Tanzania have a literacy rate of 52 percent.<sup>238</sup> Tanzania spends approximately 6.8 percent of its GDP on education.<sup>239</sup>

Tanzania has more refugees than any other African country, mainly originating from Burundi and the Democratic Republic of the Congo.<sup>240</sup> Official languages include Kiswahili, Kiunguja, and English. Arabic is also widely spoken. English is the official language in commerce, courts, and education.

The HIV/AIDS prevalence rate in Tanzania is 5.6 percent, which is the 12<sup>th</sup> largest in the world. There are over 1.4 million people in Tanzania living with HIV/AIDS and approximately 86,000 people in Tanzania die from AIDS related deaths each year.<sup>241</sup> The 2002 population census data indicates that nearly 10 % of all children were orphans (about 2 million children).<sup>242</sup> Indirect demographic analysis by UNAIDS, WHO and UNICEF in 2005 illustrates that 44% of children were orphans as a result of HIV/AIDS (about 1 million children).<sup>243</sup> There is little evidence of systematic policies for other vulnerable children (**OVCs**).<sup>244</sup>

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<sup>234</sup> Central Intelligence Agency. (2012). The World Factbook: Tanzania. Updated October 4, 2012. Retrieved October 24, 2012 CIA World Fact Book: Tanzania, <https://www.cia.gov/library/publications/the-world-factbook/geos/tz.html> [hereinafter CIA Factbook Tanzania]

<sup>235</sup> Tanzania National Bureau of Statistics, Disability Survey and Report 2008, [http://nbs.go.tz/tnada/index.php/ddibrowser/5.Population and Housing Survey 2012](http://nbs.go.tz/tnada/index.php/ddibrowser/5.Population%20and%20Housing%20Survey%202012),

<sup>236</sup> *Id.* Zanzibar is a semiautonomous island off the coast of Tanzania with an independent government.

<sup>237</sup> CIA Factbook Tanzania, *supra* note 234. Males: 90.6%;, Females: 84.2%.

<sup>238</sup> Tanzania Disability Survey and Report 2008, *supra* note 235.

<sup>239</sup> CIA Factbook Tanzania, *supra* note 234.

<sup>240</sup> *Id.*

<sup>241</sup> *Id.* This rate is the 4th highest in the world.

<sup>242</sup> Valerie Leach, UNICEF, *Children and Vulnerability in Tanzania: A Brief Synthesis*, 12 (2007), [http://opendocs.ids.ac.uk/opendocs/bitstream/handle/123456789/1813/Special\\_Paper\\_07.25\\_.pdf?sequence=1](http://opendocs.ids.ac.uk/opendocs/bitstream/handle/123456789/1813/Special_Paper_07.25_.pdf?sequence=1).

<sup>243</sup> *Id.*; UNICEF & UNAIDS, *Africa's Orphaned and Vulnerable Generations: Children Affected by AIDS*, 36 (August 2006), [http://www.unicef.org/publications/files/Africas\\_Orphaned\\_and\\_Vulnerable\\_Generations\\_Children\\_Affected\\_by\\_AIDS.pdf](http://www.unicef.org/publications/files/Africas_Orphaned_and_Vulnerable_Generations_Children_Affected_by_AIDS.pdf).

<sup>244</sup> Hazel Bines & Eric Woods, UNESCO, Country Profile Prepared for the *Education for All Global Monitoring Report 2008 and Education for All 2015: Will We Make It?* Cross Country (Eritrea, Ethiopia, Rwanda, and Tanzania) Case Study, 6 (2007), <http://unesdoc.unesco.org/images/0015/001555/155508e.pdf>.

**Table 12: Tanzania Relevant Domestic Education Legislation and Policy**

**Constitution (1977)**

- **Article 11:** Recognizes that every citizen should be free to pursue education in a field of his choice up to the highest level according to his merits and ability. Also obliges the government to ensure that there are equal opportunities to all persons to enable them to acquire educational and vocational training levels at all schools and other institutions of learning.
- **Article 13:** Recognizes that all people are equal before the law.

**National Disability Policy (2004)**

- Recognizes the psychological influence of prejudice and stigma on children with disabilities and their families.
- Acknowledges that the current education system does not allow for equal access for students with disabilities, that almost all school facilities were inaccessible and that children with disabilities were enrolled at less than 1% for primary school and even lower for education beyond primary school.
- Calls on government in collaboration with stakeholders to provide a conducive environment for inclusive education that “takes care of special needs children”.

**Tanzania Vision 2025**

- Focuses on achieving universal primary education and a right to education for all children including children with disabilities, out of school, orphans, those from low income households, and hard to reach areas.

**Disability Act (2010)**

- **Article 27:** States that all persons with disabilities shall have the right to education, training in inclusive settings and the benefits of research as other citizens while requiring equal rights for children with disabilities in related to admission to public or private schools except for where a need for special communication is required. States that children shall be provided with appropriate disability related support services or other necessary learning service from a qualified teacher or teacher assigned for that purpose.
- **Article 28:** States that every learning institution has a general obligation not to discriminate against persons with disabilities, and lists several examples of what constitutes discrimination.
- **Article 29:** Requires every manager or owner of a learning institution to take into account the special needs of persons with disabilities, and to provide adequate facilities for persons with disabilities. States that special schools “shall be for a transitional period towards inclusive schools.”
- **Article 62:** Provides penalties to those who violate the act including fines and imprisonment.

## Overview of Education System

The education structure in Tanzania consists of 2 years of pre-primary,<sup>245</sup> seven years of primary,<sup>246</sup> four years of junior secondary,<sup>247</sup> two years of senior secondary,<sup>248</sup> and up to three or more years of tertiary education (higher education).<sup>249</sup> Instruction in Tanzanian school is bilingual with English as a compulsory subject in primary school, and is the primary mode of instruction in post primary school.<sup>250</sup> Kiswahili is the medium of instruction in primary school, and is taught as a compulsory subject in secondary school.<sup>251</sup>

The government ministries that manage and coordinate the education sector in Tanzania include the Ministry of Education and Vocational Training (MOEVT)<sup>252</sup> and the Prime Minister of Regional Administration and Local Government (PMO-RALG). MOEVT is legally responsible for policy formation, coordination, monitoring, setting standards, quality assurance and quality control of the entire education system. In 1997, the Local Government Reform Program (LGRP) transferred the authority to make and effect decisions to the local government authorities. The school Inspectorate<sup>253</sup> ensures adherence to laws, regulations, and policies through evaluation and reporting to the Commissioner on Education.<sup>254</sup> The Chief Inspector of Schools reports directly to the Commissioner on Education. The Tanzania Institution of

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<sup>245</sup> United Republic of Tanzania, National Website: Education (N.D.), <http://www.tanzania.go.tz/educationf.html> (last visited October 27, 2012) [hereinafter Tanzania Gov't Education Website]. Pre-primary education is for children ages 5-6 years and is not compulsory.

<sup>246</sup> Primary education is for children ages 7-13 years and is compulsory. While tuition was eliminated in 2002, families must still pay for uniforms, testing fees, and school supplies. To complete primary education, students must pass the Primary School-Leaving Examination. See Southern and Eastern Africa Consortium for Monitoring Educational Quality, Policy Brief: Quality of Primary School Inputs in Tanzania Mainland (October 2011), [http://www.sacmeq.org/downloads/School%20inputs/TAN\\_School\\_Inputs\\_15Oct2011\\_FINAL.pdf](http://www.sacmeq.org/downloads/School%20inputs/TAN_School_Inputs_15Oct2011_FINAL.pdf).

<sup>247</sup> Students eligible for junior secondary education are 14-17 years of age and must pass the Certificate of Secondary Education Examination to move onto senior secondary school. See United Nations Educational, Scientific, and Cultural Organization, World Data on Education, United Republic of Tanzania, 7th ed. (2010/11), [http://www.ibe.unesco.org/fileadmin/user\\_upload/Publications/WDE/2010/pdf-versions/United\\_Republic\\_of\\_Tanzania.pdf](http://www.ibe.unesco.org/fileadmin/user_upload/Publications/WDE/2010/pdf-versions/United_Republic_of_Tanzania.pdf) (last visited October 24, 2012) [hereinafter UNESCO World Data on Education Tanzania].

<sup>248</sup> *Id.* Students eligible for senior secondary education are 18-19 years of age and those who complete senior secondary education must pass the Advanced-level examination.

<sup>249</sup> Tertiary education (university or post-secondary) programs range anywhere from 1-5 years depending on the program. Tanzania Gov't Education Website, *supra* note 245.

<sup>250</sup> *Id.*

<sup>251</sup> *Id.*

<sup>252</sup> *Id.* The School Heads, Ward Education Office, and School Inspectors are responsible for quality assurance at the primary and secondary levels.

<sup>253</sup> *Id.*

<sup>254</sup> *Id.* The Commissioner on Education is the academic advisor to all professional departments and organizations that provide services to schools and colleges. The Commissioner on Education reports to the Permanent Secretary who acts as the main custodian of the Minister of Education's resources.

Education (TIE) is the main body responsible for curriculum development and specifies needs for educational materials and class sizes. TIE also trains teachers on new teaching method and standards on curriculum development, initiates and guides basic research and evaluation projects with regard to education, and follows up and monitors curriculum implementation of schools.

Some children with disabilities are taught in the general education setting while others attend special schools for students with disabilities.<sup>255</sup> According to the 2008 National Disability Survey, the net enrollment rate for children without disabilities was 74 percent while the net enrollment rate for children with disabilities was 38 percent. In primary and secondary education, boys with disabilities are more likely to be educated than girls with disabilities.<sup>256</sup> According to a 2011 report, there are 16 special schools in Tanzania and 159 special units integrated into regular schools. Only two percent of children with disabilities are said to attend any kind of school.<sup>257</sup> According to the MOEVT, the Ministry of Education oversees a total of 34 government teaching colleges and provides guidance to 14 registered privately owned teacher colleges.<sup>258</sup> In 2006 there was only one teacher training college that covered special education training.<sup>259</sup>

### **Law and Policy Framework**

Tanzania has made much progress towards inclusive education for children with disabilities in terms of its development of educational policy and legal framework. In the international and regional context, Tanzania has signed the Salamanca Statement, and ratified the CRPD on November 11, 2009 and the CRC on November 20, 1989. Tanzania is a participant in the African *Decade of Persons with Disabilities* 1999-2019. The Social Welfare Department under the Ministry of Health and Social Welfare is responsible for the implementation of international and regional instruments. A National Plan of Action has been prepared, and is awaiting approval by the government.

#### *Republic of Tanzania Constitution*

Domestically, Tanzania's Constitution is generally supportive of the goal of inclusion, but does not include any specific guarantees for persons with disabilities. The 1977 Constitution of Tanzania and its amendments prohibit discrimination and recognize that all people are equal

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<sup>255</sup> Ministry of Education and Vocational Training Mainland and Ministry of Education and Vocational Training Zanzibar, *The Development of Education, National Report of the Republic of Tanzania* (October 2008), [http://www.ibe.unesco.org/National\\_Reports/ICE\\_2008/tanzania\\_NR08.pdf](http://www.ibe.unesco.org/National_Reports/ICE_2008/tanzania_NR08.pdf). [hereinafter MOEVT 2008]

<sup>256</sup> Tanzania Ministry of Education and Vocational Training, *National Strategy on Inclusive Education 2009-2017*, 8 (March 2009), [http://www.ed-dpg.or.tz/pdf/CCI/Inclusive%20Education%20Strategy\\_2009-2017.pdf](http://www.ed-dpg.or.tz/pdf/CCI/Inclusive%20Education%20Strategy_2009-2017.pdf).

<sup>257</sup> Press Release, International Aid Services, *Big Need for Special Education in Tanzania* (December 15, 2011), <http://www.ias-intl.org/?p=news&id=235>; see also *Tanzania Disability Survey and Report 2008*, *supra* note 235, <http://www.ias-intl.org/?p=news&id=235>

<sup>258</sup> Tanzania Ministry of Education and Vocation Training, Teacher Education Department, <http://216.15.191.173/ted/ted.html>, last visited October 28, 2012.

<sup>259</sup> Tanzania Ministry of Community Development, Gender and Children, *Initial Tanzania Report to the African Committee on Experts on the African Charter on the Rights and Welfare of the Child*, 31 (December 2006), <http://www.africa-union.org/root/ar/index/Report%20Initial%20-%20from%20Tanzania%20ACRWC%20Final%20-%20-%20Wine%20Korosso%20-%20%20JAMBIANI%20nzuri.pdf>.

before the law.<sup>260</sup> Article 11(b) of the Constitution recognizes that every citizen should be free to pursue education in a field of his choice up to the highest level according to his “merits and ability.”<sup>261</sup> The right to education is, thus, qualified by a student’s “merits and ability” which is problematic for persons with disabilities because they are often defined by others as having deficits in particular abilities. Such language all too often provides a justification for unequal treatment. Nonetheless, Article 11(c) of the Constitution provides: “The government shall endeavour to ensure that there are equal opportunities to all persons to enable them to acquire educational and vocational training levels at all schools and other institutions of learning.”<sup>262</sup> This provision, which focuses on removing barriers and facilitating ways to ensure equal opportunity for all persons to education, reflects a more comprehensive and inclusive approach.

### Education Policies

The Ministry of Education is responsible for enforcing and implementing the right to education for people with disabilities. In 1995, the Education and Training Policy was issued and the education system underwent several reforms towards achieving the EFA priorities and the related MDGs. In January 2001, the Ministry of Education and Culture released a framework for the Basic Education Master Plan (BEMP) for 2000-2005.<sup>263</sup> That framework recognized that there were 3.37 million children with disabilities all over the country, while only 3% are reported to be attending school.<sup>264</sup> To increase enrollment, the Ministry stated that mechanisms would be developed to provide for children with special learning needs and special equipment would be provided to those with disabilities.<sup>265</sup> The regulatory framework referring to inclusive issues includes policies and reform programs including: Education and Training Policy,<sup>266</sup> National Strategy for Growth and Reduction of Poverty (NSGRP),<sup>267</sup> Education Sector Development

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<sup>260</sup> UNITED REPUBLIC OF TANZANIA CONST. (1977), pt. III, art. 13.

<sup>261</sup> *Id.* at pt. II, art. 11(b).

<sup>262</sup> *Id.* at pt. II, art. 11(c).

<sup>263</sup> Tanzania Ministry of Education and Culture, Basic Education Master Plan (January 2001), [http://www.moe.go.tz/index.php?option=com\\_docman&task=doc\\_view&gid=28&Itemid=385](http://www.moe.go.tz/index.php?option=com_docman&task=doc_view&gid=28&Itemid=385).

<sup>264</sup> *Id.* at 33.

<sup>265</sup> *Id.*

<sup>266</sup> Tanzania Ministry of Education and Culture, Education and Training Policy (1995), [http://www.moe.go.tz/index.php?option=com\\_docman&task=doc\\_view&gid=108&Itemid=617](http://www.moe.go.tz/index.php?option=com_docman&task=doc_view&gid=108&Itemid=617). Education for All is the central objective in the, however within this policy there are only a handful of sentences on “disadvantaged groups:” “Despite all efforts to make education accessible, certain groups of individuals and communities in society have not had equitable access to education. . . . Some have not had access to this right due to their style of living, for example, hunters, gatherers, fishermen and pastoralists; others on account of marginalization, e.g. orphans and street children, still others on account of their physical and mental disabilities, such as the blind, the deaf, the crippled and the mentally retarded. . . . Therefore, Government shall promote and facilitate access to education to disadvantaged social and cultural groups.” *Id.* at 18.

<sup>267</sup> United Republic of Tanzania, National Strategy for Growth and Reduction of Poverty (June 2005), <http://www.tanzania.go.tz/nsgrf.html>. The NSGRP links disability to poverty and therefore addresses concerns across multiple sectors. That said, experts from HRBA Disability Rights Tanzania say that “the crosscutting nature of disability has been widely ignored in preparation of state budgets ever since.” NIDS/MSc Shia and Annika Nilsson, *Disability Rights Tanzania* (rev. Jan. 30, 2011), [www.msc.st/docs/HRBA-Disability-Tanzania-revised-2011-01-30.doc](http://www.msc.st/docs/HRBA-Disability-Tanzania-revised-2011-01-30.doc). [hereinafter HRBA Disability Tanzania]

Programme (ESDP),<sup>268</sup> Primary Education Development Programme (PEDP),<sup>269</sup> Secondary Education Development Program (SEDP), Adult and Non-Formal Education Strategy,<sup>270</sup> Local Reform Program (LGRP),<sup>271</sup> Child Development Policy of 2008,<sup>272</sup> and the Plan of Action for Most Vulnerable Children.<sup>273</sup> Additionally to reach children of school age who have dropped out of school, MOEVT introduced a program called Complementary Basic Education in Tanzania (COBET),<sup>274</sup> which was implemented in 2003 and designed to make formal primary education available to out of school children aged 11-18 years who are mostly girls. This program is implemented in collaboration with other education stakeholders such as UNICEF, UNCESCO, JICA, ILO, PLAN International, NGOs and Faith Based Organizations.<sup>275</sup>

Tanzania's Primary Education Development Plan II (2007-2012) has adopted inclusive education priorities for children with disabilities. Notably, this includes developing Individualized Education Plans (IEPs) for students, monitoring attendance and performance of

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<sup>268</sup> United Republic of Tanzania, Education Sector Development Programme 2008-2017 (August 2008), <http://planipolis.iiep.unesco.org/upload/Tanzania%20UR/Tanzania-ESDP-2008-2017.pdf>.

<sup>269</sup> World Bank, Tanzania - Primary Education Development Programme (June 2005), [http://www-wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2005/07/20/000090341\\_20050720085600/Rend ered/PDF/32071.pdf](http://www-wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2005/07/20/000090341_20050720085600/Rend ered/PDF/32071.pdf). The PEDP is geared towards attaining universal primary enrollment, and expressly targets all children from disadvantaged groups including AIDS orphans.

<sup>270</sup> Tanzania Ministry of Education and Vocational Training, Adult and Non-formal Education Sub-sector, Medium Term Strategy (2010/11-2014/15), [http://www.ed-dpg.or.tz/pdf/A-NFE/Adult%20and%20Non%20Formal%20Education%20Strategy\\_2010-11\\_2014-15.pdf](http://www.ed-dpg.or.tz/pdf/A-NFE/Adult%20and%20Non%20Formal%20Education%20Strategy_2010-11_2014-15.pdf). This strategy is conceived of three target groups: 11-13 year-old children, street children, disabled children, and disadvantaged children from Nomadic Communities; 14-18 year-old youths; and 19+ year-old adults.

<sup>271</sup> As previously discussed, LGRP was created to devolve the management of education services from central to local authorities.

<sup>272</sup> The Child Development Policy (2008) places special emphasis on a child's right to nutrition, health, shelter, education, safety and the right not to be discriminated against. It also outlines the roles and responsibilities of key stakeholders for childcare, and seeks to provide an environment that effectively implements various children's rights protection programs.

<sup>273</sup> Lucia and Tim Correll, Corollary Consulting, The Tanzanian National Plan of Action for Must Vulnerable Children, A Human Capacity Needs Assessment, 8 (September 2006), *available at* <http://www.ovcsupport.net/s/library.php?ld=1094>. The Tanzanian National Action Plan for Most Vulnerable Children relies on national, district, and lower levels of government to develop, coordinate, and implement policy and raise funds to deliver services to most vulnerable children.

<sup>274</sup> COBET provides equivalency schooling for students who have dropped out or never had the chance to start primary school. Students in the COBET programs are from two age groups: 11-13 year olds and 14-18 year olds. COBET adapts to the needs of its students with classes lasting 3.5 hours allowing for flexibility in scheduling for household or job conflicts. During the COBET program, students acquire numeracy, literacy and vocational skills through a 3 year curriculum that allows for a transfer to formal education.

<sup>275</sup> Ian Macpherson, UNESCO, Country Profile prepared for the *Education for All Global Monitoring Report 2008* and *Education for All by 2015: will we make it?* Tanzania Non-formal Education (2007), <http://unesdoc.unesco.org/images/0015/001555/155544e.pdf>

students with disabilities, improving school infrastructure and transforming existing special schools into resource centres for mainstream schools.<sup>276</sup>

National Strategy on Inclusive Education 2009-2017

The National Strategy on Inclusive Education has adopted a definition of inclusive education that consists of a system of education in which all children, youths and adults are enrolled, actively participate and achieve in regular schools and other education programs regardless of their diverse backgrounds and abilities, without discrimination, through minimisation of barriers and maximisation of resources.<sup>277</sup> Within the National Strategy, it is recognized that the international goals of EFA or the Universal Primary Education Goal in the MDGs will not be reached without significant effort and additional resource allocation. The Strategy contains 14 areas of action including:

- Reinforcing the presence and participation and learning of all learners through inclusive settings through legislation and policies;
- strengthening institutional arrangements for effective implementation of inclusive education;
- reviewing and redesigning resourcing and financing for inclusion and educational support;
- developing curricula and learning materials that promote differentiation and support learning;
- developing an inclusive assessment and evaluation system for learners and teachers;
- developing institution based support;
- introducing educational support needs assessments and developing effective intervention mechanisms for increasing participation of vulnerable learners;
- establishing educational resource centres;
- revised teacher education curricula and diversify teacher education provision to promote inclusive education;
- strengthening capacities of teachers' colleges to provide training on inclusive education;
- providing opportunities for provisional development for education administrators;
- carrying out awareness raising on inclusive education; use whole school development planning approach to inculcate inclusive education in school communities; and
- identifying and mobilising community resources for inclusive education.

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<sup>276</sup> United Republic of Tanzania, Education and Training Sector Development Program, Primary Education Development Programme II 2007-2012 (November 2006), [http://www.ed-dpg.or.tz/pdf/PE/Primary%20Education%20Development%20Programme-PEDP\\_II\\_2007\\_TO\\_2011-Final.pdf](http://www.ed-dpg.or.tz/pdf/PE/Primary%20Education%20Development%20Programme-PEDP_II_2007_TO_2011-Final.pdf).

<sup>277</sup> National Strategy on Inclusive Education 2009-2017, *supra* note 256 at 2.



### National Disability Policy

The National Disability Policy was approved in 2004 and in said Policy the Government of Tanzania recognized the psychological influence of prejudice and stigma on children with disabilities and their families, including the challenge associated with the fact that some parents still perceive children with disabilities as a burden and opt not to enrol them in school. The government also acknowledged that the current education system does not allow for equal access for students with disabilities, that almost all school facilities were inaccessible and that children with disabilities were enrolled at less than 1% and even lower for education beyond primary school.<sup>278</sup> Accordingly, the Policy provides: “the government in collaboration with stakeholders shall provide a conducive environment for inclusive education that takes care of special needs children.”<sup>279</sup>

### Tanzania Vision 2025

In addition, Tanzania Vision 2025 focuses on achieving universal primary education. The Tanzanian Government is implementing this policy to ensure that all children including those with disabilities, out of school, orphans, those from low income households and hard to reach areas, are not denied their right to education.<sup>280</sup> The Tanzanian Government reports that it is improving the provision of education by doing the following: constructing and rehabilitating school buildings to make them barrier free environment for learners with disabilities; providing learning/teaching materials as well as assistive devices for learners with disabilities; providing training of teachers to meet the needs of children with disabilities in special schools, integrated units and inclusive schools in ordinary schools; establishment of new special schools, units and inclusive schools, to expand enrolment of learners with disabilities; and creating disability awareness among the society to erode negative stigma associated with disability that serves as an educational barrier.<sup>281</sup>

### Disability Act 2010

In April 2010, Tanzania enacted the Disability Act which established the National Advisory Council for Persons with Disabilities. The said Council’s membership consists of a representative of the Attorney General, government ministries including the Ministry of Education, association of employers, the federation of persons with disabilities, the Tanzanian Commission for Human Rights and Good Governance, and 5 members from organizations of persons with disabilities.

Articles 27, 28, and 29 of the Disability Act focus on the right to education for persons with disabilities. Article 27 states that all persons with disabilities shall have the right to education, training in inclusive settings, and the benefits of research on an equal basis to other citizens. Article 27 also provides equal rights for children with disabilities in relation to admission to public or private schools except for where a need for special communication is

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<sup>278</sup> Tanzania Ministry of Labour, Youth and Sports, National Policy on Disability, 5 (2004), <http://www.tanzania.go.tz/pdf/NATIONAL%20POLICY%20ON%20DISABILITY.pdf>.

<sup>279</sup> *Id.* at 16.

<sup>280</sup> MOEVT 2008, *supra* note 255.

<sup>281</sup> *Id.*

required. Article 27 states that in that case, children shall be provided with appropriate disability related support services or other necessary learning service from a qualified teacher or teacher assigned for that purpose.<sup>282</sup> Article 28 provides that every learning institution is obliged not to discriminate against persons with disabilities, and lists several examples of what constitutes discrimination<sup>283</sup> For example Article 28 prohibits discrimination in the admissions process on the basis of disability and also prohibits expulsion of a student based on their disability. Article 29 requires every manager or owner of a learning institution to take into account the special needs of persons with disabilities, and to provide adequate facilities for persons with disabilities.<sup>284</sup> Notably, Article 29 provides that special schools “shall be for a transitional period towards inclusive schools,” which indicates an embrace of the concept of inclusive education for children with disabilities<sup>285</sup>

The Disability Act places responsibility with each Ministry to prepare and publish “Sectoral Plans” that outline the programme measures proposed or taken on behalf of ministries to implement the Disability Act. Ministries are also responsible for developing regulations to implement the Disability Act. Offenses and penalties exist for persons or entities that violate the Disability Act and include fines and/or, in some cases, one year of imprisonment.<sup>286</sup> While fines are appropriate, imprisonment is an ineffective penalty for discrimination in the education setting. More effective penalties, in addition to fines, include required diversity and awareness raising classes, changes to discriminatory policies, job prohibition, and in egregious instances job suspension or termination.

## **Implementation**

The significance of – and preference for - inclusive education has been recognized by the Government of Tanzania specifically with the goal of increasing the number of students enrolled in primary school and decreasing the number of out-of-school children. According to the UNESCO Global Monitoring Report, the number of out-of-school children fell by over 3 million to less than 150,000 in Tanzania.<sup>287</sup> An inclusive education policy has been developed by the Tanzanian Government, and the Ministry of Education set a 2010 target that 20 % of children with disabilities attend primary school education. The Ministry of Education also indicated that teacher training in methods and strategies to teach students with disabilities was on the top their

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<sup>282</sup> Tanzania Persons with Disabilities Act (2010), pt. VII, art. 27.

<sup>283</sup> *Id.* at pt. VII, art. 28: a) Refusal to accept or admit such a person based on their disability; b) gives terms and conditions on which it is prepared to admit such a person because of their disability; c) denies or limits any person with a disability access to any benefit provided by that institution; d) expels a student or pupil with a disability on the grounds of his disability; e) discriminates against any person in anyway way on the grounds of his disability; or f) construct or adapt a school and infrastructures that are not user friendly.

<sup>284</sup> *Id.* at pt. VII, art. 29.

<sup>285</sup> *Id.*

<sup>286</sup> *Id.* at pt. XII, art. 62(1)(ii). Corporate bodies are liable for a fine not less than 2 million and not exceeding 20 million shillings; and individuals face anywhere from a 5,000 to 7 million shilling fine or a term of imprisonment for a term of one year or both.

<sup>287</sup> UNESCO, Education for All Global Monitoring Report, Overcoming inequality: why governance matters, 63 (2009), <http://unesdoc.unesco.org/images/0017/001776/177683e.pdf>.

priority list.<sup>288</sup> While Tanzania has made strides in making inclusive education a priority within its policy, there are still gaps in implementation and access between persons with and without disabilities in education, and there remains a great deal of work to achieve real inclusion of students with disabilities.

A report from 2007 indicated that Tanzania had a primary school enrollment of 97.3 percent,<sup>289</sup> with an overall school enrollment rate of 57.3 percent.<sup>290</sup> Another report from 2008 shows that less than 1 percent of boys and girls with disabilities were enrolled in school, and in most cases these students are attending special schools for students with disabilities rather than regular schools. The 2008 Disability Survey revealed that 41.7 percent of persons with disabilities report having no education at all.<sup>291</sup>

Illiteracy is highest among persons with disabilities; one study reported that nearly one half (47.6 percent) of persons with disabilities were illiterate compared to a quarter (25.4 percent) of persons without disabilities.<sup>292</sup> Children with disabilities attend school 2 years fewer on average than children without disabilities.<sup>293</sup> A study from 2009 indicated that more than 50 percent of persons with disabilities who were 15 years of older had attended primary schools, and 44 percent had not attended school at all.<sup>294</sup> That same study revealed that only five percent had attended secondary school, and less than one percent had finished tertiary education.<sup>295</sup>

One major issue is that the overall quality of education in Tanzania must improve in order for inclusive education to be fully implemented. One expert has pointed out that there are several problems within the education system that all students must face in Tanzania including “low teacher morale and motivation, a shortage of classrooms, a shortage of textbooks and teaching materials, and high dropout rates due to the inability of parents to contribute towards their child’s education.”<sup>296</sup> If these basic needs are not being met in general education, it will be challenging to convince education policy stakeholders to prioritize the needs of students with disabilities by implementing the inclusive education policy.

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<sup>288</sup> HRBA Disability Tanzania.

<sup>289</sup> Margaret Simwanza Sitta, *Towards Universal Primary Education: The Experience of Tanzania*, UN CHRONICLE (January 12, 2007), <http://www.un.org/wcm/content/site/chronicle/home/archive/issues2007/themdgsareweontrack/towardsuniversalprimaryeducationtheexperienceoftanzania> (last visited October 29, 2012).

<sup>290</sup> United Nations Development Programme 2007-2010: Tanzania, [http://web.undp.org/africa/programmedocs/Tanzania%20-%20CPD%202007-2010%20\(English\).pdf](http://web.undp.org/africa/programmedocs/Tanzania%20-%20CPD%202007-2010%20(English).pdf).

<sup>291</sup> National Bureau of Statistics, 2008 Tanzania Disability Survey Key Results and Last Year GBS Review (November 2009), available at [www.tzdp.org.tz/uploads/media/GBS\\_-\\_Review\\_19\\_November09.ppt](http://www.tzdp.org.tz/uploads/media/GBS_-_Review_19_November09.ppt). In the same report, only 23.5 percent of persons without disabilities reported that they had no education.

<sup>292</sup> *Id.*

<sup>293</sup> Leach, *Children and Vulnerability in Tanzania: A Brief Synthesis* (2007), *supra* note 242 at 18.

<sup>294</sup> D. H.Mwakyusa, Tanzania National Bureau of Statistics, Press Release regarding 2008 Tanzania Disability Survey (June 10, 2009).

<sup>295</sup> *Id.*

<sup>296</sup> D.R. Mmbaga. *The Inclusive Classroom in Tanzania: Dream or Reality?* Stockholm: Institute of International Education, University of Stockholm (2002).

An additional problem is the significant gap between the quality of education that students with and without disabilities receive. There are several reasons why this gap still remains. Experts have attributed these inequities to stigma;<sup>297</sup> inadequate government policies and lack of proper implementation; lack of transportation; lack of properly equipped schools;<sup>298</sup> inaccessible schools; lack of teacher training; and a lack of due process to protect persons with disabilities rights to education.<sup>299</sup>

Persons with disabilities experience a great deal of prejudice and stigma in the education and employment sectors. For example, one study indicated that 33 percent of persons with disabilities reported having problems with the attitudes of others at work or school.<sup>300</sup> This also includes the attitudes of parents with children with disabilities who choose not to send their child to school.<sup>301</sup> One advocate stated, “they are tortured, humiliated, kept indoors, shame to family.”<sup>302</sup> There are also periodic reports of parents killing their children with a disability.<sup>303</sup> The government needs to implement strategies to reduce stigma and bring disability awareness to parents so they will send their children with disabilities to school.<sup>304</sup>

Placements for students with disabilities within the Tanzanian education system are currently limited to special schools and integrated units within regular schools.<sup>305</sup> These practices maintain segregation of students with disabilities from their peers. Inclusive education, on the other hand, requires that students with disabilities are placed alongside their peers without disabilities in the same classroom, where they receive access to accommodations, assistive technology, educational needs, and specialized instruction within the general education curriculum and framework. The 2010 Disability Law does promote a move towards more inclusive education settings by indicating that placement in special schools for students with

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<sup>297</sup> E. Dawson, S. Hollins, M. Mukongolwa, and A. Witchalls. *Including disabled children in Africa*. JOURNAL OF INTELLECTUAL DISABILITY RESEARCH, 47 (3), 153-154. (2003).

<sup>298</sup> Mmbaga, *supra* note 296.

<sup>299</sup> J.A Kapuya. *National policy on disabilities*. Ministry of Labour, Youth Development and Sports. Republic of Tanzania (2004), [www.tanzania.go.tz/pdf/NATIONAL%20POLICY%20ON%20DISABILITY.pdf](http://www.tanzania.go.tz/pdf/NATIONAL%20POLICY%20ON%20DISABILITY.pdf)

; Heather Michelle Aldersey & H.Rutherford Turnbull, *The United Republic of Tanzania's National Policy on Disability: A Policy Analysis*, JOURNAL OF DISABILITY POLICY STUDIES (February 11, 2003), <http://dps.sagepub.com/content/early/2011/02/10/1044207310397877>.

<sup>300</sup> 2008 Tanzania Disability Survey Key Results and Last Year GBS Review,(November 2009), *supra* note 291.

<sup>301</sup> eRko, Report of the European Conference on Millennium Development Goals: Inclusion of People with Disabilities, 25 (May 14-15, 2007), [http://www.handicap-international.fr/bibliographie-handicap/4PolitiqueHandicap/hand\\_pauvrete/mdg/REPORT\\_EU\\_Conference\\_MDGs\\_Inclusion\\_of\\_PwD.pdf](http://www.handicap-international.fr/bibliographie-handicap/4PolitiqueHandicap/hand_pauvrete/mdg/REPORT_EU_Conference_MDGs_Inclusion_of_PwD.pdf) (last visited October 24, 2012) [hereinafter European Conference MDG Report].

<sup>302</sup> Laura Hershey. *Tanzania: Research explores lives of disabled women & girls* Disability World (Society for Disability Studies Conference in Winnipeg, Canada 2001), [www.disabilityworld.org/09-10\\_01/women/tanzania.shtml](http://www.disabilityworld.org/09-10_01/women/tanzania.shtml) (last visited October 29, 2012).

<sup>303</sup> *Id.*

<sup>304</sup> European Conference MDG Report, *supra* note 301.

<sup>305</sup> National Strategy on Inclusive Education 2009-2017, *supra* note 256 at 18.

disabilities are acceptable for a transitional period of time, i.e. after the transitional period students would move into the general education system. However, currently, most students with disabilities who do attend school are in special schools, and even those schools do not always provide the services students with disabilities need to be successful. For example, for children who are deaf and hard of hearing, there is a problem presented by the lack of special schools that teach sign language.<sup>306</sup> A DPO representative stated that “the Tanzanian Government still considers disability inclusion in school as too costly...The Government is worried about the cost implications of employing sign language interpreters.”<sup>307</sup>

While the law and policy framework does support inclusive education, there is no clear process for students with disabilities and parents to bring claims if they are being denied equal access to education. Detailed regulations could usefully set forth remedies for students being denied equal access to education and consequences/penalties for those preventing students with disabilities from equal access.

Tanzania has provided the foundation for all of its students to achieve equal access to education in its law and policy framework. However, in practice, inequities in education are still very much a reality for persons with disabilities and those living in extreme poverty, girls, and orphans. Specific action towards implementation of the inclusive education policy should be prioritized.

## **Recommendations**

### **Law, policy and institutional reforms**

- **Ensure timely and detailed reporting to the CRPD Committee.**
- **Undertake ongoing law and policy review.**
- **Improve coordination of all actors dealing with disability issues.** Responsibility for coordination of inclusive education should remain within a single ministry. In addition, all disability issues should ideally fall within the responsibility of a single governmental coordinating entity. Coordination among all stakeholders, governmental as well as DPOs, research institutes, and other NGOs should be improved in order to promote coherency and consistency in regulations, policy, and monitoring mechanisms that reflect the goals of inclusion of PWD.

### **Resource allocation for inclusive education**

- **Allocate resources to inclusive education.** Funding must be directed towards inclusive education goals; and the receipt of funding to schools should be linked to implementation of inclusive education practices and enrollment, completion, and employment outcomes for students with disabilities.

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<sup>306</sup> European Conference MDG Report, *supra* note 301.

<sup>307</sup> *Id.*

- **Allocate resources for improving physical accessibility of all schools.** Physical accessibility of schools presents major barriers for students with physical disabilities. Plans to improve accessibility must be adopted, with sufficient resource allocation to achieve accessibility progressively.
- **Ensure new school accessibility.** New schools should be built for accessibility for all students with disabilities. This approach is consistent with the CRPD and is also far more economically viable as it is less costly to incorporate accessible design elements prior to construction rather than retrofitting schools after they are already built.
- **Allocate resources for improving information accessibility within all schools.** Plans to improve accessibility must be adopted, with sufficient resource allocation to achieve accessibility progressively.
- **Allocate resources for improving public transportation accessibility.** Plans to improve accessibility must be adopted, with sufficient resource allocation to achieve accessibility progressively.

#### **Disability data collection**

- **Introduce accurate data gathering on disability and the education of children with disabilities.** Data and statistics are not currently gathering in any ongoing and consistent fashion and are therefore required in order to track progress and implementation of inclusive education for persons with disabilities.

#### **Teacher Training and Curriculum**

- Incorporate special needs education training into general education curriculum for teachers. Recruit teachers with disabilities and create special scholarships for students with disabilities in secondary and tertiary education to incentivize completion.

#### **Access to Justice to Protect the Right to Inclusive Education**

- Remedies and accessible due process procedures should be put in place for students with disabilities to access in cases of discrimination, including physical or informational inaccessibility, or unequal treatment based on disability, lack of adequate support and services for students with disabilities, and the failure to provide reasonable accommodations.

#### **Implement Disability Awareness-raising**

- **Create public service and awareness campaigns** dedicated at all youth promoting inclusion of persons with disabilities to combat stigma.

#### **Consultation with persons with disabilities through their representative organizations.**

- DPOs should be involved in the further development of inclusive education related law, policy and regulations, as well as teacher curriculum requirements.

# *Uganda*

## **General Overview**

A July 2012 estimate of Uganda's population is 33,640,833 people.<sup>308</sup> English is the official national language used in schools, courts of law, and most media in Uganda. Other languages include Ganda or Luganda which are preferred for native language populations and may be used in school.<sup>309</sup> As many as 184,000 children in Uganda are considered to have some kind of disability that requires accommodation in education.<sup>310</sup>

The 2002 national census estimates that approximately four percent of the population had a disability, however several researchers have stated this number is too low.<sup>311</sup> The 2005/06 Uganda National Household Survey estimates that the actual disability rate is around 7.1% of the total population. The prevalence rate of disability is much higher in Northern Region due to the consequences of civil strife and war.

Uganda has a large refugee and IDP population with 19,382 Sudanese, 81,840 Congolese, 21,899 Somalian, and 12,590 Rwandan refugees. Ugandan refugees as well as members of the Lord's Resistance Army (LRA) seek shelter in southern Sudan and the Democratic Republic of the Congo's Garamba National Park; LRA forces have also attacked Kenyan villages across the border.<sup>312</sup> There are an estimated 30,000 IDPs in Northern Uganda.<sup>313</sup> Conflict has disrupted the provision of basic social services and family lives in some places in Uganda, which has led to an increase of IDPs.<sup>314</sup> One in four households in Uganda foster at least one orphan by providing for health, shelter, nutrition, education and other needs. The violence meted out against IDPs has left some with psychosocial problems and also a higher likelihood of acquiring HIV/AIDS.<sup>315</sup> Women and girls are particularly at risk for HIV infection on account of their vulnerability to sexual violence. Uganda is ranked 8<sup>th</sup> in the world for the number of people living with HIV/AIDS (1.2 million) and the number of HIV/AIDS related deaths (64,000/year). The HIV/AIDS prevalence rate is at 6.5%.<sup>316</sup> It is crucial to consider these populations amongst the persons with disabilities affected by the Ugandan Education system.

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<sup>308</sup> Central Intelligence Agency. (2012). The World Factbook: Uganda (updated October 4, 2012), <https://www.cia.gov/library/publications/the-world-factbook/geos/ug.html> (last visited October 28, 2012) [hereinafter CIA Factbook Uganda].

<sup>309</sup> *Id.*

<sup>310</sup> Nathan Swedberg, *Uganda Invests in Educating Students with Disabilities*, USAID FRONTLINES (September/October 2011), [http://transition.usaid.gov/press/frontlines/fl\\_sep11/FL\\_sep11\\_EDU\\_UGANDA.html](http://transition.usaid.gov/press/frontlines/fl_sep11/FL_sep11_EDU_UGANDA.html) (last visited October 28, 2012).

<sup>311</sup> Uganda Bureau of Statistics, 2002 Census, <http://www.ubos.org/onlinefiles/uploads/ubos/pdf%20documents/2002%20CensusAnalyticalReportESummary.pdf>.

<sup>312</sup> CIA Factbook Uganda, *supra* note 308.

<sup>313</sup> *Id.*

<sup>314</sup> Uganda Ministry of Gender, Labour and Social Development, National Orphans and Other Vulnerable Children Policy (2004), [http://www.worlded.org/docs/Publications/hiv/ovc\\_policy.pdf](http://www.worlded.org/docs/Publications/hiv/ovc_policy.pdf).

<sup>315</sup> *Id.*

<sup>316</sup> CIA Factbook Uganda, *supra* note 308.

Table 13: Uganda Relevant Domestic Education Legislation & Policy

## Uganda Relevant Domestic Education Legislation & Policy

### Constitution (1995)

- **Article 21:** Grants all people equality before the law and freedom from discrimination including persons with disabilities.
- **Article 30:** Grants all persons in Uganda a right to education.
- **Article 35:** Specifically designated for persons with disabilities, ensuring a right to respect and human dignity, and charging the state and society to take appropriate measures to ensure that persons with disabilities realize their full mental and physical potential. This includes the responsibility of parliament to enact laws for the protection of persons with disabilities.

**Vision 2025 (1995):** Includes the goal of “increasing people’s access to information and participation in self, community and national development.”

**Uganda National Institute of Special Education Act:** Creates National Institute to train teachers and other personnel working in the field of special needs education and rehabilitation to cater to all kinds of persons with disabilities and learning needs. Institute also conducts research, develops and disseminates resources, and creates programming for persons with disabilities. Institute also initiates outreach programmes to promote greater awareness among teachers, parents, leaders, and the general public about persons with disabilities.

**Children’s Act (1996):** Outlines the roles of government and other stakeholders in supporting all children including those with disabilities. Specifies that the parents of children with disabilities and the state shall take appropriate steps to see that those children are assessed as early as possible to determine the extent and nature of their disabilities, offered appropriate treatment, and afforded facilities for their rehabilitation and equal opportunities to education.

**National Council for Disability (NCD) Act (2002):** Enacted to promote the rights of persons with disabilities as set out in international conventions and other legal instruments. The overall goal of NCD is to promote equality of persons with disabilities through empowerment and participation in monitoring of services.

**National Orphans and Other Vulnerable Children Policy (2004):** Ensures that orphans, vulnerable children and their families access basic essential services. Ensures that resources for interventions that benefit orphans and other vulnerable children are mobilized and efficiently utilized. Requires capacity of duty-bearers for orphans and other vulnerable children to provide essential services is enhanced

The Northern Uganda Survey of 2004 estimated that 72 percent of persons with disabilities living in Northern Uganda are in a state of chronic poverty.<sup>317</sup> The NUDIPU stated in their 2008-2013 Strategic Plan that, “due to lack of access to education most PWDs do not have skills and competencies required to get employment or get involved in any activities that give them livelihood. Disability and poverty can also be traced from deep rooted negative cultures, where a disabled child is looked at as a curse or more so if a child is a girl, then they are denied food, education and healthcare among others.”<sup>318</sup>

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<sup>317</sup> Uganda Bureau of Statistics, Northern Uganda Baseline Survey (2004)..

<sup>318</sup> National Union of Disabled Persons of Uganda, Strategic Plan 2008-2013, 9–10 (2008).



Approximately 3.2 percent of Uganda's GDP support education (ranked 127<sup>th</sup> in the world); Uganda has a literacy rate of 66.8 percent.<sup>319</sup> Since 1963, a four-tier model structures the Uganda Education system. This includes a two-year pre-primary stage of education for children ages 3-5 years, seven years of primary education, six years of secondary education (four years lower secondary, 2 years upper secondary), and 3 to 5 years of post-secondary education.<sup>320</sup>

In 1997, the number of children receiving education increased when free primary education was made available for four children per family under Uganda's Universal Primary Education (UPE) policy. Following the introduction of UPE in 1997, gross enrollment in primary schools increased from a total of 3.1 million in 1996 to 5.3 million in 1997, an increase of 73% in one year. This compares with an increase in gross primary school enrollment, in the decade preceding the introduction of UPE, of just 39% (from 2.2 million in 1986). By 2003, gross enrollment in primary schools had reached 7.6 million.<sup>321</sup>

Primary school graduates must pass the Primary Leaving Examinations (PLE) to attend secondary education. Some children who do not attend secondary school attend 3-year technical schools as an alternative. Those who graduate from lower secondary school attend several different programs including 2 to 3-year technical institutes, 2-year primary teacher colleges, Department training colleges, and upper secondary schools.<sup>322</sup>

Overall the rate of enrollment for students with disabilities in Uganda is low. In 2007, a DFID study revealed that there were approximately 183,000 disabled students attending school in the entire country.<sup>323</sup> Additionally, the study revealed a significant drop-out trend for students with disabilities, with 21 percent attending their primary one year, and only 6.4 attending their primary seven year.<sup>324</sup> Students with disabilities in Uganda who attend school are enrolled in special schools for students with disabilities or are educated in the general education setting.

Currently, the administration of the education system is mostly decentralized with much of the authority and resources devolved to the districts. A more localized administration has allowed for more accountability and responsiveness for education services. While the management and provision of education administration is in the hands of the district, policy control and maintenance of standards through teacher education, curriculum, and examinations remains centralized under the Ministry of Education and Sports (MoES). There are 7 departments under the MoES headed by the Director of education with a commissioner for each: Pre-primary and Primary Education; Secondary Education; Technical, Vocational and Business Education; Higher Education; Special Education and Career Guidance; Teacher Education;

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<sup>319</sup> CIA Factbook Uganda, *supra* note 308. Literacy rates (definition of literacy is age 15 and over can read and write): Males: 76.8 %; Females: 57.7%

<sup>320</sup> Southern and Eastern Africa Consortium for Monitoring Education Quality, Uganda Education Fact Sheet, <http://www.sacmeq.org/education-uganda.htm#fact> (last visited October 28, 2012).

<sup>321</sup> Inter-Regional Inequality Facility, Policy Brief 10: Universal Primary Education: Uganda (February 2006), <http://www.odi.org.uk/sites/odi.org.uk/files/odi-assets/publications-opinion-files/4072.pdf>.

<sup>322</sup> Uganda Education Fact Sheet, *supra* note 320.

<sup>323</sup> DFID Uganda, Disability Scoping Study, 23 (February 2009), [http://www.ucl.ac.uk/lc-ccr/downloads/scopingstudies/dfid\\_ugandareport](http://www.ucl.ac.uk/lc-ccr/downloads/scopingstudies/dfid_ugandareport).

<sup>324</sup> *Id.*

**Table 14: Uganda Relevant Domestic Education Legislation & Policy Cont'd**

**Persons with Disabilities Act (PWDA) (2006)**

- **Section 5:** Requires the promotion of education development of persons with disabilities through:
  - Encouragement of inclusive education and creation of education policies and programs that provide access to all educational programs to persons with disabilities;
  - Establishment of special schools and curricula where inclusive education is not possible;
  - Training programs for teaching children with disabilities for both special and general educators and places emphasis on retaining special educators at all schools;
  - Specialized instructional materials, assistive devices, structural and other adaptations of educational institutions, and the provision of assistive services during examination; and
  - Commitment of not less than 10% of all educational expenditure to the educational needs of persons with disabilities at all levels.
- **Section 6:** Prohibits discrimination from educational services of persons with disabilities and lays out specific acts that constitute discrimination in this context including:
  - Refusing to accept applications of qualified individuals for an educational institute because of the applicant's disability;
  - Discriminatory admissions policies or conditions that exclude persons with disabilities;
  - Denying or limiting access to any benefit or service provided by the educational institution to students with disabilities;
  - Expelling a student because of his or her disability; or
  - Subjecting a student with a disability to any other unfair treatment relating to his or her disability.

**National Policy on Disability (2006):** Contains strategic objective of “promoting equal opportunities and enhanced empowerment, participation and protection of rights of persons with disabilities irrespective of gender, age, and type of disability”.

**Equal Opportunities Act (2007):** Gives authority for Uganda's mandate to eliminate discrimination and inequalities against any group including persons with disabilities, and to take affirmative action in favor of marginalized groups for the purpose of redressing imbalances which exist against them.

**Education Act (2008):** States that the education of the child is a joint responsibility of the state, the parent, and other stakeholders, and that basic education shall be provided as a right for all persons. Requires primary education be universal and compulsory for all children 6 years of age. Requires that head teachers in public schools must make schools friendly, especially to girls and/or children with disabilities, and also requires private schools to be conducive to students with disabilities.

Education Planning.<sup>325</sup> Part of the duty of MoES is to set, disseminate, monitor, periodically evaluate and ensure quality and achievement in the national education standards.<sup>326</sup>

## Law and Policy Framework

Uganda's legal system is comprised of mixture of English common law and customary law.<sup>327</sup> The Ugandan legal framework supports inclusive education through its commitments under international treaties, including the CRPD, and domestic law, including the Ugandan Constitution, and Uganda federal disability law. Additionally, the National Council for Disability was created in 2003 to monitor and evaluate the rights of persons with disabilities as set out in international conventions, the constitution and other domestic laws.<sup>328</sup>

Uganda ratified the CRPD on September 25, 2008, without reservations.<sup>329</sup> Accordingly, it is obliged to implement Article 24 of the CRPD on inclusive education.<sup>330</sup>

### Ugandan Constitution

Article 30 of the Uganda Constitution of 1995 grants all persons in Uganda a right to education.<sup>331</sup> Article 21 of the Constitution grants all people equality before the law and freedom from discrimination, including persons with disabilities.<sup>332</sup> Article 35 of the Constitution specifically addresses the rights of persons with disabilities, including the right of persons with disabilities to respect and human dignity and obliging the state and society to take appropriate measures to ensure that persons with disabilities realize their full mental and physical potential, including the responsibility of parliament to enact laws for the protection of persons with disabilities.<sup>333</sup> Additionally, Vision 2025, also issued in 1995, sets forth Uganda's long term development objectives and includes the goal of "increasing people's access to information and participation in self, community and national development."<sup>334</sup>

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<sup>325</sup> Uganda Education Fact Sheet, *supra* note 320.

<sup>326</sup> United Nations Educational, Scientific and Cultural Organization (UNESCO), World Data on Education: Uganda, 7th ed. (2010/11) (September 2010), [http://www.ibe.unesco.org/fileadmin/user\\_upload/Publications/WDE/2010/pdf-versions/Uganda.pdf](http://www.ibe.unesco.org/fileadmin/user_upload/Publications/WDE/2010/pdf-versions/Uganda.pdf).

<sup>327</sup> CIA Factbook Uganda, *supra* note 308.

<sup>328</sup> National Council for Disability Uganda, General Remarks, NEW VISION (December 3, 2009), <http://www.enteruganda.com/brochures/disabledhome05.html> (last visited October 28, 2012).

<sup>329</sup> See United Nations Treaty Collection, Chap. IV Human Rights, 15. Convention on the Rights of Persons with Disabilities, ratified by Uganda on September 25, 2008, [http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-15&chapter=4&lang=en](http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-15&chapter=4&lang=en).

<sup>330</sup> United Nations Convention on the Rights of Persons with Disabilities, art. 24, <http://www.un.org/disabilities/convention/conventionfull.shtml>.

<sup>331</sup> CONST. OF REPUBLIC OF UGANDA (1995), chap. 4, art. 30.,

<sup>332</sup> *Id.* at chap. 4, art. 21.

<sup>333</sup> *Id.* at chap. 4, art. 35.

<sup>334</sup> Uganda Vision 2025: A Strategic Framework for National Development (1998).

### Ugandan National Institute of Special Education Act

In 1995, Uganda adopted the Uganda National Institute of Special Education Act, thereby establishing the Uganda National Institute of Special Education (UNISE). Said Institute, later renamed the Faculty of Special Needs and Rehabilitation at Kyambogo University, represents an attempt to enhance teacher training and curriculum development in the context of special education. The purpose of the Act was to train teachers and other personnel working in the field of special needs education and rehabilitation to cater to all kinds of persons with disabilities and learning needs.<sup>335</sup> Other functions of the institute include conducting research, developing and disseminating resources, and creating programming for persons with disabilities.<sup>336</sup> More specifically, the Act establishing UNISE provides that said Institute initiate outreach programs to promote greater awareness among teachers, parents, leaders, and the general public about persons with disabilities. This Act does not specify whether general education teachers are required to undergo any special education training. The CRPD requires, however, that students with disabilities should be able to receive support and training required and have equal access to education within the general education setting at all levels of education.<sup>337</sup>

### Children's Act

In 1996, the Children Act<sup>338</sup> was enacted. Said Act outlined the roles of government and other stakeholders in supporting all children including those with disabilities. The Children Act provides for the protection of the rights of the child by their parents or guardians who have the duty to maintain the child and to give such a child the right to education and other basic needs. Section 9 of the Children Act specifies that the parents of children with disabilities and the state shall take appropriate steps for early identification to determine the extent and nature of their disabilities, offer appropriate treatment, and provide facilities for their rehabilitation and equal opportunities to education.

### National Council for Disability (NCD) Act

In 2002, the National Council for Disability (NCD) Act was enacted to promote the rights of PWD<sup>339</sup> as set out in international conventions and other legal instruments. The Council is a governmental body as opposed to an independent national human rights body focusing on disability. The overall goal of NCD is to promote equality of PWD through empowerment and participation in monitoring of services. There are reports of some tension between NCD and DPOs due to a perception that the NCD is taking over roles traditionally assumed by DPOs.<sup>340</sup>

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<sup>335</sup> Uganda National Institute of Special Education Act (1995), pt. II, § 4.

<sup>336</sup> *Id.*

<sup>337</sup> Convention on the Rights of Persons with Disabilities, *supra* note 23 at art. 24(2)(d),(4).

<sup>338</sup> The Children's Act (1996), pt. II, § 9, *available at* [http://www.ugandaembassy.com/The\\_Children\\_Act.pdf](http://www.ugandaembassy.com/The_Children_Act.pdf).

<sup>339</sup> The National Council for Disability Act (2003), *available at* [http://www.kituoachakatiba.org/index2.php?option=com\\_docman&task=doc\\_view&gid=804&Itemid=36](http://www.kituoachakatiba.org/index2.php?option=com_docman&task=doc_view&gid=804&Itemid=36).

<sup>340</sup> DFID Uganda, Disability Scoping Study, *supra* note 323 at 21.

### National Orphans and Other Vulnerable Children Policy

In 2004, the Ministry of Gender, Labour and Social Development enacted the National Orphans and Other Vulnerable Children Policy.<sup>341</sup> The goal of this policy is the “full development and realization of rights of orphans and other vulnerable children,” and its objectives are “to ensure that the legal, policy, and institutional framework for child protection is developed and strengthened at all levels; to ensure that orphans, vulnerable children and their families access basic essential services package; to ensure that resources for interventions that benefit orphans and other vulnerable children are mobilized and efficiently utilized; and to ensure that the capacity of duty-bearers for orphans and other vulnerable children to provide essential services is enhanced.”<sup>342</sup> One targeted group the policy aims to reach is children affected by disability and/or HIV/AIDS and other diseases.<sup>343</sup>

### Persons with Disabilities Act of 2006

The Persons with Disabilities Act (PWDA), 2006, requires the promotion of educational development of persons with disabilities and prohibits discrimination against students with disabilities.<sup>344</sup> The affirmative obligations under Section 5 of the PWDA are to be implemented through the encouragement of inclusive education<sup>345</sup> and the creation of education policies and programs<sup>346</sup> to provide access to all educational programs to persons with disabilities.<sup>347</sup> Where inclusive education is not possible, the PWDA provides for the establishment of special schools and curricula.<sup>348</sup> This represents a shortcoming insofar as the CRPD that requires states to “ensure an inclusive education at all levels.”<sup>349</sup>

Training programs for teaching children with disabilities for both special and general educators are required under the Act, with an emphasis on recruiting and retaining special educators at all schools.<sup>350</sup> In this regard the OHCHR has criticized the PWDA for failing to address indirect discrimination and for not referencing the specific duty to provide “reasonable accommodations of the individual requirements, as required by the CRPD. It should be noted, however, that while the duty to provide reasonable accommodation is not explicitly referenced, the concept is implied in Section 5 of PWDA which requires specialized instructional materials, assistive devices,<sup>351</sup> structural and other adaptations of educational institutions,<sup>352</sup> and the

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<sup>341</sup> National Orphans and Other Vulnerable Children Policy, 7 (2004), *supra* note 314.

<sup>342</sup> *Id.* at 8.

<sup>343</sup> *Id.* at 11.

<sup>344</sup> Persons with Disabilities Act (2006), pt. II, §§ 5, 6.

<sup>345</sup> *Id.* at pt. II, § 5(a).

<sup>346</sup> *Id.* at pt. II, § 5(b).

<sup>347</sup> *Id.* at pt. II, § 5(c); paying particular attention to the requirements of the girl child in rural areas.

<sup>348</sup> *Id.* at pt. II, § 5(d).

<sup>349</sup> Convention on the Rights of People with Disabilities, *supra* note 330 at art. 24(1).

<sup>350</sup> Persons with Disabilities Act of (2006), *supra* note 344 at pt. II, §5(e),(f),(h).

<sup>351</sup> *Id.* at pt. II, § 5(g).

<sup>352</sup> *Id.* at pt. II, § 5(i).

provision of assistive services during examinations.<sup>353</sup> Section 5 of the PWDA also addresses budgetary allocation for disability inclusion, requiring “the commitment of not less than 10 % of all educational expenditure to the educational needs of persons with disabilities at all levels.”<sup>354</sup>

Section 6 of the PWDA prohibits discrimination from educational services of persons with disabilities and lays out specific acts that constitute discrimination in this context. This includes the general prohibition against the denial of educational services on the basis of disability,<sup>355</sup> and, also, more specific prohibitions, including the refusal to accept applications of qualified individuals for an educational institute on the basis of the applicant’s disability,<sup>356</sup> discriminatory admission policies or conditions that exclude persons with disabilities,<sup>357</sup> denying or limiting access to any benefit or service provided by the educational institution to students with disabilities,<sup>358</sup> expulsion on account of disability,<sup>359</sup> or subjecting a student with a disability to other unfair treatment on account of disability.<sup>360</sup>

DPOs within Uganda have criticized the Act on the basis that they were consulted far too late in the drafting process and, thus, had minimal opportunity for meaningful input.<sup>361</sup> Draft regulations for the Act are underway and will be critical in advancing implementation of the goals of inclusive education. These regulations are being developed through a consultative process that involves representatives from multiple government sectors, DPOs, and the Joint Community Based Rehabilitation (CBR) Guidelines by the World Health Organisation (WHO), International Labor Organisation (ILO) and the United Nations Education and Scientific Cultural Organisation (UNESCO).<sup>362</sup> According to OHCHR, the draft regulations include a link between the prohibition of discrimination against students with disabilities in admission<sup>363</sup> and the duty to provide an inclusive education environment.<sup>364</sup> OHCHR is critical of the draft regulations because there is no mention of an educational requirement to provide “appropriate individualized supported measures” as laid out in the Article 24 of the CRPD.<sup>365</sup>

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<sup>353</sup> *Id.* at pt. II, § 5(k).

<sup>354</sup> *Id.* at pt. II, § 5(j).

<sup>355</sup> *Id.* at pt. II, § 6(1).

<sup>356</sup> *Id.* at pt. II, § 6(2)(a).

<sup>357</sup> *Id.* at pt. II, § 6(2)(b).

<sup>358</sup> *Id.* at pt. II, § 6(2)(c).

<sup>359</sup> *Id.* at pt. II, § 6(2)(d).

<sup>360</sup> *Id.* at pt. II, § 6(2)(e).

<sup>361</sup> DFID Uganda, Disability Scoping Study (2009), *supra* note 323 at 19.

<sup>362</sup> Edson Ngirabakunzi, *Latest Development on Human Rights and Disability in Uganda* (February 14, 2012) Disability Rights in Uganda - Research Blog, [http://disability-uganda.blogspot.com/2012\\_02\\_01\\_archive.html](http://disability-uganda.blogspot.com/2012_02_01_archive.html) (last visited October 29, 2012).

<sup>363</sup> OFFICE FOR THE HIGH COMMISSIONER OF HUMAN RIGHTS, WORKING PAPER: A REVIEW OF THE UGANDAN LEGAL FRAMEWORK RELEVANT TO PERSONS WITH DISABILITIES, COMPARATIVE ANALYSIS TO THE CONVENTION ON THE RIGHTS OF PERSONS WITH DISABILITIES (2009) [hereinafter OHCHR Working Paper]; Draft Regulations, No. 4 (2).

<sup>364</sup> OHCHR Working Paper, *supra* note 363. Draft Regulations, No. 4 (3).

<sup>365</sup> OHCHR Working Paper, *supra* note 363; Convention on the Rights of Peoples with Disabilities, *supra* note 330 at art. 24(2)(d),(e).

### National Policy on Disability

In February 2006, the Ugandan Government published its National Policy on Disability with the strategic objective of “promoting equal opportunities and enhanced empowerment, participation and protection of rights of persons with disabilities irrespective of gender, age, and type of disability.”<sup>366</sup> Said policy provides additional support for the right to education and access without discrimination on the basis of disability.

### Equal Opportunities Commission Act

In 2007, the Government of Uganda enacted the Equal Opportunities Commission Act to give effect to Uganda’s mandate to eliminate discrimination and inequality on the basis of disability, among other grounds, and to take affirmative action in favor of marginalized groups for the purpose of redressing imbalances which exist against them.<sup>367</sup>

### Education Act of 2008

The Education Act of 2008 states that the education of the child is a joint responsibility of the state, the parent, and other stakeholders, and that basic education shall be provided as a right for all persons.<sup>368</sup> Section 10(3)(a) of the Education Act of 2008 requires that primary education shall be universal and compulsory for all children aged 6 years.<sup>369</sup>

The Education Act of 2008 requires that head teachers in public schools must make schools friendly, taking especially into account the girl-child and pupils with disabilities,<sup>370</sup> and also requires that any private school ensures that the school environment is conducive to students with special needs.<sup>371</sup> The mention of students with disabilities in the Education Act is important even though said references are vague and do not ensure equal access or effective individualized support of students with disabilities to schools. Regulations that provide detailed specific prohibitions and affirmative obligations of schools to ensure equal access and support are required to provide a truly inclusive education setting, in keeping with the principles an obligations set forth in the CRPD.

The Department for Disabled Persons within the Ministry of Gender, Labour and Social Development has the primary responsibility for registration, vocational rehabilitation and coordination of employment for persons with disabilities. The Ministry of Gender, Labour and Social Development coordinates the Uganda Community-Based Rehabilitation (CBR) Programme. The Ministry of Education and Sports is in charge of disability issues relating to education in collaboration with the Uganda Institute of Special Education (UNISE). Within the MOES a department of Special Needs Education and Career Guidance has been created.

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<sup>366</sup> Uganda Ministry of Gender, Labour and Social Development, National Policy on Disability (2006).

<sup>367</sup> Uganda Equal Opportunities Commission Act (2007), available at [http://www.ilo.org/wcmsp5/groups/public/---ed\\_protect/---protrav/---ilo\\_aids/documents/legaldocument/wcms\\_172624.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---ilo_aids/documents/legaldocument/wcms_172624.pdf).

<sup>368</sup> The Education (Pre-primary, Primary and Post-primary) Act 2008, pt. III, § 4, available at [http://planipolis.iiep.unesco.org/upload/Uganda/Uganda\\_EducationAct.pdf](http://planipolis.iiep.unesco.org/upload/Uganda/Uganda_EducationAct.pdf).

<sup>369</sup> *Id.* at pt. IV, § 10(3)(a).

<sup>370</sup> *Id.* at pt. VII, § 15(2)(k).

<sup>371</sup> *Id.* at pt. VII, § 31(3)(g).

## Implementation

While Uganda has a legal framework to support inclusive education, its implementation of inclusive education could be improved. NUDIPU stated, “although the law looks comprehensive in addressing disability issues, it has not been translated into concrete programs for persons with disabilities.”<sup>372</sup> The Ministry of Gender, Labour and Social Development has been criticized for not fulfilling their duties to provide guidance and to enforce legislation supporting inclusive education practices. There still exists a gap in the framework due to the lack of regulations to promote implementation of disability laws,<sup>373</sup> and, even if the draft regulations are adopted, they fall short of the requirements set forth in Article 24 of the CRPD.

According to a DFID 2009 Disability Scoping Study,<sup>374</sup> the majority of children with disabilities do not attend primary schools, and the vast majority of children with disabilities that do attend primary schools do not complete their primary education.<sup>375</sup> The study indicates that there are many institutional and attitudinal barriers that contribute to such a low completion rate. In an interview, the Dean of Special Needs Education faculty at Kyamba University stated that in rural areas, the physical environment of many schools and lack of adequate public transportation contributed to low attendance rate for students with disabilities and that parents of students with disabilities are often unwilling to pay necessary school fees. Children with disabilities also face a great deal of stigma and bullying from their peers in school. Uganda’s current education system is inaccessible to some students as it is intensely exam-focused. Finally, there is a shortage of trained special needs education teachers in Uganda. Ugandan teachers have reported fear, ignorance, and a lack of confidence as factors that impacted their attitude towards children with disabilities prior to having them in the classroom. However, one report found that after teachers had children with disabilities in the classroom, teachers reported increased confidence, coping strategies, and reported positive changes in attitude.

The Uganda CRPD report - the report prepared for submission to the CRPD Committee, consistent with CRPD reporting requirements - indicated that there were 21,000 Uganda schools that practiced inclusive education, and also showed that there were 138 special education units in the country. As stated previously, supporting special schools or units for children with disabilities that are segregated from their peers without disabilities is not considered an inclusive education practice under the CRPD. Moreover, some reports suggest that even within “inclusive schools” settings; there is not enough support for students with disabilities. Because of the lack of implementation in Uganda to ensure equal access to education, many DPOs have requested for the extension and building of more special schools on the basis that students with disabilities will receive a better education and, thus, stand a better chance of securing long term employment, as opposed to mainstream schools that currently do not provide enough support for students with disabilities. This tension is a barrier to realizing inclusive education. Additionally, research indicates that special schools only provide education to a very small number of children

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<sup>372</sup> National Union of Disabled Persons of Uganda (2008), *supra* note 318 at 11.

<sup>373</sup> DFID Uganda, Disability Scoping Study (2009), *supra* note 323 at 7.

<sup>374</sup> *Id.* at 22.

<sup>375</sup> *Id.* at 8.



with disabilities, are more expensive, and fundamentally do not provide social inclusion for persons with disabilities because they are segregated settings.

The Ministry of Gender, Labour and Social Development points to inadequate resources and funding as a major impediment to the implementation of inclusive education. “The increase in legislation protecting the rights of persons with disabilities is not matched with an increase in financial and human resources, this is our biggest challenge at the moment.”<sup>376</sup> The Uganda Human Rights Commission 2011 Annual report showed that the budget allocation to special needs was approximately 0.63% of the current budget. It is estimated that 10 percent of school aged children will require special education services, and this number was reported to have increased by 11.9% from 194,682 children in 2008 to 217,770 children in 2009; however special education continues to receive minimal funding. In 2011/2012 it was 0.78 percent.<sup>377</sup>

## **Recommendations**

### **Law, policy and institutional reforms**

- **Ensure timely and detailed reporting to the CRPD Committee.**
- **Undertake ongoing law and policy review.**
- **Improve coordination of all disability related ministries.** Responsibility for coordination of inclusive education should remain within a single ministry. In addition, all disability issues should ideally falls within the responsibility of a single governmental coordinating entity. Coordination among all stakeholders, governmental as well as DPOs, research institutes, and other NGOs should be improved in order to promote coherency and consistency in regulations, policy, and monitoring mechanisms that reflect the goals of inclusion of PWD.

### **Resource allocation for inclusive education**

- **Allocate resources to inclusive education.** Funding must be directed towards inclusive education goals; and the receipt of funding to schools should be linked to implementation of inclusive education practices and enrollment, completion, and employment outcomes for students with disabilities.
- **Allocate resources for improving physical accessibility of all schools.** Physical accessibility of schools presents major barriers for students with physical disabilities. Plans to improve accessibility must be adopted, with sufficient resource allocation to achieve accessibility progressively.

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<sup>376</sup> DFID Uganda, Disability Scoping Study (2009), *supra* note 323 at 7.

<sup>377</sup> Uganda Human Rights Commission, 14th Annual Report, 120 (2011), [http://uhrc.ug/index.php?option=com\\_docman&task=doc\\_view&gid=125&tmpl=component&format=raw&Itemid=97](http://uhrc.ug/index.php?option=com_docman&task=doc_view&gid=125&tmpl=component&format=raw&Itemid=97).

- **Ensure new school accessibility.** New schools should be built for accessibility for all students with disabilities. This approach is consistent with the CRPD and is also far more economically viable as it is less costly to incorporate accessible design elements prior to construction rather than retrofitting schools after they are already built.
- **Allocate resources for improving information accessibility within all schools.** Plans to improve accessibility must be adopted, with sufficient resource allocation to achieve accessibility progressively.
- **Allocate resources for improving public transportation accessibility.** Plans to improve accessibility must be adopted, with sufficient resource allocation to achieve accessibility progressively.

### **Disability data collection**

- **Introduce accurate data gathering on disability and the education of children with disabilities.** Data and statistics are not currently gathering in any ongoing and consistent fashion and are therefore required in order to track progress & implementation of inclusive education for persons with disabilities.

### **Teacher Training and Curriculum**

- Incorporate “special needs” education training into general education curriculum for teachers. Recruit teachers with disabilities and create special scholarships for students with disabilities in secondary and tertiary education to incentivize completion.

### **Access to Justice to Protect the Right to Inclusive Education**

- Remedies and accessible due process procedures should be put in place for students with disabilities to access in cases of discrimination, including physical or informational inaccessibility, or unequal treatment based on disability, lack of adequate support and services for students with disabilities, and the failure to provide reasonable accommodations.

### **Implement Disability Awareness-raising**

- **Create public service & awareness campaigns** dedicated at all youth promoting inclusion of persons with disabilities to combat stigma.

### **Consultation with persons with disabilities through their representative organizations.**

- DPOs should be involved in the further development of inclusive education related law, policy and regulations, as well as teacher curriculum requirements.

## **PART IV - CONCLUSIONS AND RECOMMENDATIONS**

International and regional human rights law frameworks guarantee the rights of persons with disabilities to education and recognize the principles that underpin that right, including non-discrimination and reasonable accommodation, accessibility, inclusion and full participation. The relatively recent adoption of the CRPD and the corresponding lack of disability-specific guidance within mainstream human rights instruments and mechanisms is undoubtedly a factor in the need to develop well-designed national policies that fit within a comprehensive legislative framework for providing persons with disabilities, particularly children, with equal access to quality education. The conclusions and recommendations that follow lay out a roadmap for progress in developing the legislative, institutional and policy frameworks necessary to support the right to education for persons with disabilities. These are derived from the obligations set forth in the CRPD and the general human rights framework. They are further informed by recommendations on implementing the right to education for children and adults with disabilities articulated by, among others, the UN Special Rapporteur on the Right to Education and the CRPD Committee.

### **Participation in International and Regional Instruments**

**Ratification of the CRPD, with timely and detailed reporting on Article 24(3) to the CRPD Committee.** Ratification should be the first priority for States that have not yet ratified the CRPD which, within the EAC, includes Burundi. For States that have ratified the CRPD, timely reporting to the CRPD Committee with detailed information on the implementation of Article 24 should be prioritized, notwithstanding the current backlog in consideration of State reports by the CRPD Committee.

### **National Law, Policy and Institutional Reforms to Advance Inclusive Education**

**Review of legislative framework to assess compliance with CRPD requirements on achieving the right to education for persons with disabilities.** Ongoing review of the law and policy framework in order to ensure consistency with the CRPD, in particular the right to inclusive education, should be pursued. Few countries have in place the necessary law and policy framework to give effect to the right to inclusive education for persons with disabilities, an essential feature of which is the right to non-discrimination in education and the requirement that reasonable accommodation be provided in education and the explicit recognition of the right to inclusive education. Gaps identified in the individual country reviews should be addressed as part of an ongoing process to assess and improve implementation of inclusive education and the rights of persons with disabilities more generally within the EAC.

**Ensure coordination of all actors dealing with disability issues.** Responsibility for coordination of inclusive education should, ideally as recommended by the UN Special Rapporteur on the Right to Education, remain within a single ministry. In addition, all disability issues should ideally fall within the responsibility of a single governmental coordinating entity. Coordination among all stakeholders, governmental as well as DPOs, research institutes, and

other NGOs should be improved in order to promote coherency and consistency in regulations, policy, and monitoring mechanisms that reflect the goals of inclusion of persons with disabilities.

### **Resource Allocation for Inclusive Education**

**Allocate resources to inclusive education.** Funding must be directed towards inclusive education goals; and the receipt of funding to schools should be linked to implementation of inclusive education practices and enrollment, completion, and employment outcomes for students with disabilities.

**Allocate resources for improving physical accessibility of all schools.** Physical accessibility of schools presents major barriers for students with physical disabilities. Plans to improve accessibility must be adopted, with sufficient resource allocation to achieve accessibility progressively.

**Ensure new school accessibility.** New schools should be built for accessibility for all students with disabilities. This approach is consistent with the CRPD and is also far more economically viable as it is less costly to incorporate accessible design elements prior to construction rather than retrofitting schools after they are already built.

**Allocate resources for improving information accessibility within all schools.** Plans to improve accessibility must be adopted, with sufficient resource allocation to achieve accessibility progressively.

**Allocate resources for improving public transportation accessibility.** Plans to improve accessibility must be adopted, with sufficient resource allocation to achieve accessibility progressively.

### **Disability data collection**

**Introduce accurate data gathering on disability and the education of persons with disabilities.** Data and statistics are required to be gathered in accordance with Article 31 of the CRPD, which include gatherings of data on education. Collection of data relating to Article 24, disaggregated as appropriate, is required in order to help assess implementation and to identify and address the barriers faced by persons with disabilities in exercising their right to education, including:

- Information on the number of boys and girls with disabilities in early-stage education
- Number and percentage of students with disabilities in tertiary education
- Number and percentage of students with disabilities by gender and fields of study

### **Implementation and monitoring measures consistent with CRPD Requirements**

**Designation of Article 33(1) entity to ensure coordination of disability rights matters, including the coordination of education matters.** Coordination of disability issues, including education, is essential given that responsibilities for implementing disability rights are often spread across numerous ministries. Article 33 calls for a coordinating entity to ensure policy coherence and effective implementation.

**Designation of Article 33(2) body to undertake independent monitoring of CRPD implementation, including implementation of Article 24.** This could include, for example, designation of a Disability Focal Point within the designated independent monitoring mechanism.

**Inclusion of persons with disabilities through their representative organizations, consistent with Article 33(3) in monitoring the implementation of Article 24.**

**Access to justice to protect the right to inclusive education.** Accountability mechanisms must be put into place to ensure that the right to education may be effectively exercised and enforced where violated. Bodies that receive complaints regarding violations of the right to education, such as national human rights institutions, ombudsmen, administrative bodies, among others, must be in place to allow complaints about the right to inclusive education to be brought before complaints mechanism.

## **ANNEX 1: ARTICLE 24 REPORTING GUIDELINES OF THE CRPD COMMITTEE**

The following guidelines have been put forward by the CRPD Committee in order to outline for States the issues that must report on in order to meet their reporting guidelines under the CRPD for Article 24:

### **Article 24 - Education**

This article recognizes the right of persons with disabilities to education on the basis of equal opportunity, ensuring an inclusive education system at all levels and the facilitation of access to lifelong learning.

State Parties should report on:

1. Measures taken to ensure that every child with disabilities has access to early-stage education, and mandatory primary, secondary and higher education
2. Information on the number of boys and girls with disabilities in early-stage education
3. Information on the existing significant differences in the education of boys and girls in the different education levels and whether there are policies and legislation to cater for these differences
4. Legislative and other measures that ensure that schools and materials are accessible and that individualized reasonable accommodation and support required by persons with disabilities is provided to ensure effective education and full inclusion
5. Availability of specific skills-training services for children, adults or teachers who so require in Braille, sign languages, augmentative and alternative communication, mobility and other areas
6. Measures taken for the promotion of the linguistic identity of deaf persons
7. Measures taken to ensure education is delivered in the most appropriate languages, modes, means of communication, and environments for the individual
8. Measures to ensure an adequate training on disability to professionals in the education system, as well as measures to incorporate persons with disabilities in the education team
9. Number and percentage of students with disabilities in tertiary education
10. Number and percentage of students with disabilities by gender and fields of study
11. Reasonable accommodation provisions and other measures to ensure access to lifelong learning education
12. Measures taken by the State to ensure early identification of persons with disabilities and their education needs

## ANNEX 2: ARTICLE 24 IMPLEMENTATION GUIDELINES

### CRPD ARTICLE 24 IMPLEMENTATION GUIDELINES<sup>378</sup>

The following guidelines are intended to be used as a tool for reviewing progress by States parties towards implementation of CRPD Article 24 obligations. They are presented in the form of user-friendly checklists. They may, for example, assist State Parties in undertaking scoping exercises, investigations and reviews of CRPD implementation progress.

The guidelines consist of two parts and are presented in the form of checklists. These checklists include: (1) questions relating to general implementation measures for Article 24; and (2) questions relating to issue-specific measures of Article 24 implementation. Questions are presented so as to elicit one of three possible responses: (1) Yes; (2) No; (3) Uncertain or unknown. An affirmative response does not necessarily indicate compliance, nor does a negative response necessarily indicate non-compliance (it may well indicate a need for further inquiry). A response which indicates uncertainty or lack of information can be a helpful indicator of the need for further information and inquiry.

The guidelines, like the CRPD itself, are drafted so as to be applicable across countries and legal systems. They can also serve as a point of departure for the development of more country-specific guidelines and can thus be contextualized for a country context, made more specific, and the like.

#### **General Implementation Guidelines for Article 24**

Have appropriate implementation measures of a general nature been taken to implement Article 24, in particular:

- Comprehensive analysis, including of legislation, to modify or abolish existing laws, regulations, customs and practices that constitute discrimination in education against persons with disabilities?
  - Are there any provisions that exclude persons with disabilities from the general education system? If so, are they under review for reform?
  - Are there any provisions that require segregation of persons with disabilities from the regular education system? If so, are they under review for reform?

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<sup>378</sup> The format for the Checklists are inspired, in large part, by the Implementation Checklists provided for each provision of the Convention on the Rights of the Child in the seminal UNICEF publication, *Implementation Handbook on the Convention on the Rights of the Child* (Rachel Hodgkin & Peter Newell, rev. ed., 2002). An initial draft of these Guidelines was prepared for the EU project, *Study on challenges and good practices in the implementation of the UN Convention on the Rights of Persons with Disabilities*. For a copy of that report, see European Foundation Centre, *Study on challenges and good practices in the implementation of the UN Convention on the Rights of Persons with Disabilities*, VC/2008/1214, Brussels, 2010.

- Scoping exercise to ensure that all legislation, policy and practice are compatible with Article 24, for all persons with disabilities throughout the jurisdiction?
- Adoption of appropriate legislative, administrative and other measures for the implementation of the rights recognized in Article 24?
  - Including legislation protecting persons with disabilities from discrimination, which incorporates the denial of reasonable accommodation, in education?
  - Do all measures reflect the general principles in Article 3 (e.g., non-discrimination, inclusion, and respect for difference)?
  - Including budgetary analysis and allocation of necessary resources?
- Identification of relevant DPOs/civil society partners for consultation in the development and implementation of legislation and policies, and in other decision-making processes concerning Article 24 and monitoring Article 24?
- Identification and coordination of the responsible departments and agencies at all levels of government (all departments affecting education) (e.g., is there a coordinating mechanism established pursuant to Article 33(1)? Is a single ministry responsible for the education of persons with disabilities?
- Development of mechanisms for monitoring and evaluation of Article 24, including an independent monitoring mechanism as required by Article 33(2) (e.g., national human rights institution or disability commission)?
- Adoption of a strategy to secure full implementation of the Article 24 (this may be in the form of a separate inclusive education plan or may be part of the national education plan and also included in a national human rights action plan)?
  - Which includes where necessary the identification of goals and indicators of progress, including in relation to Article 24, specifically inclusive education?
  - Which does not affect any provisions which are more conducive to the rights of persons with disabilities in the area of education?
  - Which raises the awareness of Article 24 and inclusive education among the general population?
  - Which recognizes other relevant international standards?
  - Including in international cooperation programs?



- Collection of data relating to Article 24, disaggregated as appropriate, to help assess implementation and to identify and address the barriers faced by persons with disabilities in exercising their right to education?
  - Including information on the number of boys and girls with disabilities in early-stage education?
  - Including number and percentage of students with disabilities in tertiary education?
  - Including number and percentage of students with disabilities by gender and fields of study?
- Dissemination of data and statistics collected in relation to Article 24?
- Application of Article 24 to international cooperation programs relevant to the State Party?
- Promotion of training of professionals and staff working with persons with disabilities in education?
- Measures to ensure the full and equal enjoyment of Article 24 by women and girls with disabilities?
  - Including information on existing substantial differences in education of boys and girls with disabilities and whether law and policy is addressing such differences?
- Measures to ensure the full enjoyment of Article 24 by children with disabilities?
  - Do such measures make the best interests of the child a primary consideration?
  - Do children with disabilities have the right to express their views freely on all matters affecting them and are their views given due weight in accordance with their age and maturity?
- Measures to ensure the accessibility of the education system, for persons with disabilities:
  - Including the physical environment in the education system?
  - School transportation systems?
  - Information and communications, including information and communications technologies and systems, utilized by the education system?
  - To other facilities and services utilized by the education system?
  - Do such measures apply to urban and rural settings?

In jurisdictions where relevant, does Article 24 extend to all parts of federal states without any limitations or exceptions?

Have measures been taken to ensure government monitoring of implementation of Article 24, as required by Article 33(1)?

Have measures been taken to ensure independent monitoring of implementation of Article 24, as required by Article 33(2)?

Are remedies available to victims of violations under Article 24?

### **SPECIFIC IMPLEMENTATION GUIDELINES FOR ARTICLE 24**

- Does inclusive education provided for children with disabilities aim to:
  - Develop their personalities to their fullest potential?
  - Develop their talents to their fullest potential?
  - Develop their mental abilities to their fullest potential?
  - Develop their physical abilities to their fullest potential?
  - Prepare children to participate effectively in a free society?
- Are persons with disabilities included in the general education system, specifically, are children with disabilities:
  - Able to access early stage education?
  - Included in free and compulsory primary education?
  - Secondary education? Higher education?
  - On an equal basis with others?
- Do persons with disabilities have their individual requirements for reasonable accommodation met to facilitate their effective education within the general education system, including:
  - Individualized education plans?
- Is education for persons with disabilities provided in environments that maximize academic and social development?
  - Does the environment primarily focus on academic pursuits?
  - Does the environment promote social interaction?
  - Does the environment facilitate social interaction for all?

- Do persons with disabilities have access to life and social development skills to facilitate their full and equal participation in education and as members of the community?
  - Does the education system facilitate the learning and use of Braille, alternative script, augmentative and alternative modes, means and formats of communication?
  - Does the education system facilitate the learning and use of orientation and mobility skills, such as use of white canes, wheelchairs?
  - Does the education system facilitate peer support and mentoring?
  - Does the education system facilitate the learning of sign language?
  - Does the education system promote the linguistic identity of the deaf community?
    - Including through teaching sign language for all students?
- Does the education of persons, and in particular children, who are blind, deaf or deafblind, meet individual requirements to ensure delivery in the most appropriate languages and modes and means of communication?
  - Are there teachers, including teachers with disabilities, who are qualified in sign language and/or Braille?
- Are professionals and staff who work at all levels of education:
  - Trained in disability awareness?
  - The use of appropriate augmentative and alternative modes, means and formats of communication?
  - Educational techniques and materials to support persons with disabilities?
- Are persons with disabilities included as teachers and administrators in school systems?
- Is the general tertiary education, vocational training, adult education and lifelong learning system accessible to persons with disabilities without discrimination on equal basis with others?
  - Are individualized requirements met?

## ANNEX 3: THE DUTY TO RESPECT, PROTECT AND FULFILL THE RIGHT TO INCLUSIVE EDUCATION

States are obliged to respect, protect and fulfill the right of persons with disabilities to inclusive education. The *respect, protect and fulfill* framework is an important tool that has helped to concretize State obligations with regard to specific human rights. The following framework applies this tool to the specific obligation on States to ensure that persons with disabilities enjoy the right to inclusive education.

Taken as a whole, States' obligations with regard to inclusive education include:

1. **Obligation to respect:** States must refrain from denying or limiting equal access to inclusive education. Measures that hinder or prevent the enjoyment of the right to inclusive education by persons with disabilities must be avoided.

Example: The State does not adopt or maintain laws that discriminate against persons with disabilities in their access to education.

Example: The State amends discriminatory law and policy and puts into place legislation to provide specific protection against discrimination on the basis of disability in education.
2. **Obligation to protect:** States must take all appropriate measures to ensure that third parties do not restrict the right to inclusive education of persons with disabilities.

Example: The State ensures that private universities do not discriminate against persons with disabilities by failing to accommodate persons with disabilities.

Example: The State promptly investigates allegations of violence or abuse against students with disabilities in any educational setting, whether public or private.
3. **Obligation to fulfill:** States must be proactive in their adoption and implementation of measures to give effect to the principles of equal access and non-discrimination in education.

In fulfilling the right to inclusive education, **the State takes measures to facilitate** the right to enable and assist individuals and communities to enjoy the right to inclusive education:

Example: The State may provide disability training to public school teachers to help them understand how to effectively accommodate students with disabilities in the classroom.

Example: The State may introduce affirmative action programs to enhance the participation of students with disabilities in education.

Example: The State may undertake specific recruitment actions and outreach to increase the employment of teachers with disabilities in education.

In fulfilling the right to inclusive education, **the State takes measures to provide** for the right to inclusive education:

Example: The State provides programming to ensure that vulnerable communities are able to effectively access education, for example through providing accessible transportation to schools for students with and without disabilities in hard-to-reach communities.