

International and domestic perspectives on disability and education: Children with disabilities and the right to education in rural Zimbabwe: A case study of Mwenezi District, Masvingo Province

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1. Introduction¹

Throughout history, children with disabilities have been denied access to education, normal family life; adequate health care; opportunities for play or training and the right to participate in childhood activities.² In every region in the world, persons with disabilities often live on the margins of society, deprived of the most basic human rights and fundamental freedoms. According to the United Nations -

*Persons with disabilities make up the world's largest and most disadvantaged minority. The numbers are damning: an estimated 20 per cent of the world's poorest persons are those with disabilities; 98 per cent of children with disabilities in developing countries do not attend school; an estimated 30 per cent of the world's street children live with disabilities; and the literacy rate for adults with disabilities is as low as 3 per cent—and, in some countries, down to 1 per cent for women with disabilities.*³

Due to barriers to access to education, fewer than five percent of children with disabilities (CWDs) in the world attend school and in some cases the figure is less than one percent.⁴ According to the Inter-Censal Demographic Survey (ICDS, 1997) Zimbabwe had a total of 218

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² See Committee on the Rights of the Child 'General discussion on the rights of children with disabilities', CRC/C/69 (1997) 51.

³ United Nations, *From exclusion to equality: Realising the rights of persons with disabilities: A handbook for Parliamentarians* on the Convention of the Rights of Persons with Disabilities and its Optional Protocol (2007) 1.

⁴ UNICEF address to the Committee on the Rights of Persons with Disabilities, Day of General Discussion on the 'right to accessibility', 7 October 2010.

421 (two percent of the country's total population then) persons with disabilities (PWDs). Of these, 56 % were male and 44 % were female. Seventy-five percent (75%) of PWDs lived in rural areas while 25 % lived in urban areas.⁵ It has also been reported that of every three children who are out of school in Zimbabwe, one is a child with a disability. Furthermore, it is estimated that one in three CWDs is out of school and that 75% of CWDs never complete primary school education.⁶

These are worrying statistics for a country striving to achieve the millennium development goal of universal primary education. A SINTEF study conducted in 2003 indicated that 32 per cent of PWDs in Zimbabwe have had no schooling (36 per cent had some primary schooling, and 32 per cent had some education beyond primary level). This is particularly disturbing if one considers the central role that education plays in fostering the enjoyment of other rights and promoting the development of children, communities and nations. Without educational opportunities, CWDs will not have the chance to develop to their full potential and will most likely face tremendous barriers to their full, social and economic integration in society. Part of the challenge appears to be that, disability has not been seriously tabled as part of the human rights and national development agenda. Instead, it is largely viewed as a charity or social welfare issue. As the Committee on Economic, Social and Cultural Rights (CESCR) has observed; –

Education is both a human right in itself and an indispensable means of realizing other human rights. As an empowerment right, education is the primary vehicle by which economically and socially marginalized adults and children can lift themselves out of poverty and obtain the means to participate fully in their communities...Increasingly, education is recognized as one of the best financial investments States can make. But the importance of education is not just practical: a well-educated, enlightened and active mind, able to wander freely and widely, is one of the joys and rewards of human existence.⁷

⁵ UNICEF *Orphans and Other Vulnerable Children and Adolescents in Zimbabwe: A study of children and adolescents in Zimbabwe* (2001) 74.

⁶ See L Dube 'The plight of deaf and dumb children in education', Manica Post, 20 December 2011.

⁷ See CESCR General Comment 13 'The right to education (article 13 of the Covenant)' (Hereafter General Comment 13) (1999) para 1.

In this article, we discuss impediments to access to education by CWDs in rural Zimbabwe and propose how these impediments may be overcome. First, the article discusses the right of CWDs to education at international law and the obligations this right imposes on States Parties. We discuss the right to education under the Standard Rules on the Equalization of Opportunities for Persons with Disabilities (the Standard Rules); the Convention on the Rights of the Child (CRC) and the Convention on the Rights of Persons with Disabilities (CRPD). These instruments create obligations which States Parties should observe in order to enable CWDs to develop and play an important role in society. Second, the article discusses the national legal framework for the protection of CWDs' right to education. This includes a survey of the relevant constitutional provisions and an analysis of other statutory instruments such as the Education Act,⁸ and the Disabled Persons Act (DPA).⁹ A discussion of the case study data collected in Mwenezi District leads to the conclusion of this article.

2.1 International legal framework

In this section, we discuss the international regulatory framework for the right to education of CWDs. We discuss the relevant provisions of the Standard Rules on the Equalization of Opportunities for Persons with Disabilities; the Convention on the Rights of the Child, the Convention on the Rights of Persons with Disabilities and the African Children's Charter

2.2 The Standard Rules on the Equalization of Opportunities for Persons with Disabilities (Standard Rules)¹⁰

The Standard Rules constitute a whole document on disability policy, containing a much higher degree of specification and giving more guidance on what should be done to equalize opportunities for CWDs in the context of education. Under the Standard Rules, the principle of 'equalization of opportunities' means the process through which the various systems of society and the environment are made available to all, particularly to PWDs.¹¹ The purpose of the

⁸ Chapter 25:04.

⁹ Chapter 17:02.

¹⁰ See General Assembly Resolution A/Res/48/96.

¹¹ Para 25 of the Standard Rules.

Standard Rules is to ensure that all PWDs, as members of their societies, exercise the *same rights and obligations* as others.¹²

In terms of Rule 6 (dealing with education), States should recognize the principle of equal educational opportunities for PWDs, in integrated settings. The education of PWDs should be an integral part of the education system.¹³ The State should ensure that adequate accessibility and support services, designed to meet the needs of children with different disabilities, are provided.¹⁴ Special attention should be given to the rights and needs of very young CWDs and adults, particularly women, with disabilities.¹⁵

The Standard Rules require the State, as part of reasonable accommodation of CWDs, to (a) have a clearly stated disability policy, understood and accepted at the school level and by the wider community; (b) allow for curriculum flexibility, addition and adaptation; and (c) provide for quality materials, ongoing teacher training and support teachers.¹⁶ These sub-rules are designed to ensure that the core principles of availability, acceptability, adaptability and accessibility of educational settings are always complied with. Availability connotes that every State Party should have, within its geographical territory, functioning educational institutions and programmes in sufficient quantities.¹⁷ Acceptability requires the State to ensure that the form and substance of education, including curricula and teaching methods, have to be acceptable. Adaptability requires the State to ensure that education is flexible so that it can adapt to the needs of changing societies and communities and respond to the needs of students within diverse social and cultural settings. Accessibility implies that educational institutions and programmes have to be accessible to everyone, without discrimination, within the jurisdiction of the State Party concerned. This is critical in ensuring equal access to education by CWDs.¹⁸

The Standard Rules further make room for the provision of special education where the general school system does not yet adequately meet the needs of all CWDs. For instance, the Standard

¹² Para 15 of the Standard Rules.

¹³ Rule 6(1) of the Standard Rules.

¹⁴ Rule 6(2) of the Standard Rules.

¹⁵ Rule 6(5) of the Standard Rules.

¹⁶ Rule 6(6) of the Standard Rules.

¹⁷ CESRC General Comment 13, para 6.

¹⁸ For further details on the scope of these essential features of education, see para 5 of the Standard Rules.

Rules provide that due to the particular communication needs of the deaf and the blind, these classes of children may be more suitably educated in schools specially made for such children or special units in mainstream schools.¹⁹ This is often the case where the school is poorly equipped to deal with children with multiple and severe disabilities. Even then, however, special education should be aimed at preparing students for education in the general school system and the quality of such education should reflect the same standards as general education.²⁰ To foster the gradual integration of special education services in mainstream schools, CWDs should be afforded the same portion of educational resources as children without disabilities.

In order to implement such an approach, States should ensure that teachers are trained to educate CWDs within regular schools and that the necessary equipment and support are available to bring CWDs up to the same level of education as their non-disabled peers. This requires the introduction of sign language, Braille and other modes of communication to ensure that CWDs have equal access to education.²¹ It is encouraging to note that Zimbabwe adopted the Standard Rules and should act in a manner consistent with them.

2.3 The Convention on the Rights of the Child (CRC)

Under the CRC, 'States Parties recognize the right of the child to education'. This right must be achieved progressively and on the basis of equal opportunity'.²² States Parties, including Zimbabwe, are legally bound to 'respect and ensure the rights set forth in the present Convention [including the right to education] to each child within their jurisdiction without discrimination of *any kind*, irrespective of the child's or his or her parent's or legal guardian's ... disability, birth or other status'.²³ These provisions outlaw disability-based discrimination against CWDs. Disability-based discrimination includes any distinction, exclusion, restriction or preference, or denial of reasonable accommodation based on disability which has the effect of nullifying or impairing the recognition, enjoyment or exercise of economic, social or cultural rights.²⁴ The prohibition of discrimination enshrined in Article 2 (1) of the CRC is subject to

¹⁹ Rule 6(9) of the Standard Rules.

²⁰ Rule 6(7) of the Standard Rules.

²¹ See for instance General Comment 5, para 35.

²² Article 28(1) of the CRC.

²³ Article 2(1) of the CRC.

²⁴ See CESRC General Comment 5 'Persons with disabilities' (hereafter General Comment 5) para 15 and article 2 of the CRPD.

neither progressive realisation nor the availability of resources. It applies fully and immediately to all aspects of education and encompasses all internationally prohibited grounds of discrimination, including disability. Thus, while Articles 28 and 29 of the CRC do not mention CWDs, application of Article 2 precludes their discrimination in accessing education.²⁵

However, the adoption of transitory special measures intended to bring about equality between CWDs and their able-bodied counterparts does not constitute a violation of the right to non-discrimination with regard to education. This observation is subject to two provisos. First, the remedial measures should not lead to the maintenance of unequal or separate standards for different groups. Second, the measures should not be continued after the objectives for which they were taken have been achieved. The second aspect is intended to prevent reverse discrimination against children without disabilities. The CRC seeks to bring the rights of CWDs to the forefront and spells out what States Parties must do to fulfil these rights. In the context of the right to education, the CRC explicitly states that the education of the child should be directed to (a) the development of the child's personality, talents and mental and physical abilities to their fullest potential; (b) the development of respect for human rights and fundamental freedoms and (c) the preparation of the child for responsible life in a free society'.²⁶ Thus, the education of CWDs should be targeted at achieving these noble goals. More importantly, the breadth of these goals shows that the main concern should be on the best interest of the whole child and his or her life chances, not just the disability.

States Parties also bear the obligation to ensure that a mentally or physically disabled child enjoys a full and decent life, in conditions which ensure dignity, promote self-reliance and facilitate the child's active participation in the community.²⁷ This approach resonates with the movement of the international community towards the equalization of opportunities for persons with disabilities. Children with disabilities cannot enjoy full and decent lives nor live self-reliant lives if their right to education is not respected, protected, promoted and fulfilled. In similar parlance, active participation in the community remains an un-realizable dream for children with

²⁵ See Committee on the Rights of the Child, General Comment No 1, 'The aims of education' U.N. Doc. CRC/GC/2001/1 (2001) and U Kil Kelly 'Disability and children: The Convention on the Rights of the Child (CRC)' in G Quinn & T Degener (eds) *Human rights and Disability: The current use and future potential of United Nations human rights instruments in the context of disability* (2002) 199.

²⁶ Article 29(1) of the CRC.

²⁷ Article 23(1) of the CRC.

disabilities if remedial measures are not taken to benefit them as a historically disadvantaged group. Further, the CRC extends to children with disabilities the right to special care. The special care to which the child is entitled must be 'designed to *ensure that the disabled child has effective access to and receives education, training, health care services, rehabilitation services and preparation for employment ...in a manner conducive to the child's achieving the fullest possible social integration and individual development*'.²⁸ Clearly, the drafters of the CRC realised that it is difficult for CWDs to have access to and receive education in the absence of measures and policies structured to achieve this goal. Likewise, it is difficult for CWDs to achieve the fullest possible development and social integration without effective access to education, training and preparation for employment. For this reason, the drafters of the CRC sought to link the child's right to special care, in the context of education, to the purpose for which education is attained; namely individual development and social integration.

However, the extension to the child of special care (even in the context of the right to education) should be 'subject to available resources' and be 'appropriate to the child's condition and the circumstances of the parents or others caring for the child'.²⁹ Therefore, the State should, when designing measures to 'ensure that the disabled child has effective access to education and training', make sure that the measures it adopts adequately address both the child's condition and the circumstances of the parents. In other words, the more severe the child's disabilities are and the more incapacitated the child's parents are, the more targeted the measures to be adopted by the State should be. Similarly, where the child's parents live in absolute poverty, the State should respond to the circumstances of the parents by footing the bill for the child's education and other expenses. It is important to note that Zimbabwe ratified the CRC and is therefore bound to implement the provisions of the CRC at the local level.

2.4 The Convention on the Rights of Persons with Disabilities (CRPD)

In terms of the CRPD, States Parties shall take all necessary measures to ensure the full enjoyment by children with disabilities of all human rights and fundamental freedoms on an

²⁸ Article 23(2) and (3) of the CRC.

²⁹ Article 23(2) of the CRC.

equal basis with other children.³⁰ International child rights law recognises their entitlement to education on an equal basis with other children and to be provided with assistance where necessary to achieve this right.³¹ The right, to be enjoyed equally without discrimination on the basis of disability, include the right to education.³² The CRPD embodies the response of the international community to the long history of discrimination against PWDs. It covers many areas in which PWDs have historically been discriminated against. These include access to justice; participation in political and public life; employment; freedom from torture, exploitation and violence; freedom of movement and access to education. Access to education is dealt with in article 24 of the CRPD. Article 24 reads as follows:

The CRPD explicitly recognises the right of PWDs to education. The right to education should be realized without discrimination and on the basis of equal opportunity for all persons.³³ Article 24 seeks to remedy the exclusion and marginalization that CWDs have faced for centuries. It shows that the international community is aware that the prevailing trend is that PWDs tend to have much less access to education than their non-disabled counterparts.³⁴ The exclusion of CWDs from education results in life-long barriers to meaningful employment, health and political participation. For this reason, the main focus of Article 24 is on the elimination of disability-based discrimination in educational settings, as well as the provision of inclusive education at various levels. Further, Article 24 focuses primarily on access of PWDs to the general education system, rather than separate or segregated educational settings.

However, special schools should continue to exist for those individuals still wishing to opt-out of mainstream settings and those who cannot – because of severe learning disabilities – cope with the expected pace of learning in inclusive settings. Article 24 envisages the need for increased accessibility of educational settings and the need to train teachers and staff, including teachers with disabilities, as some of the ways by which equal access to education can be enhanced. For

³⁰ Article 7.

³¹ L Wakefield and N Murungi 'Domesticating international standards of education for children with intellectual disabilities: A case study of Kenya and South Africa' in I Grobbelaar-du Plessis and T van Reenen (eds) *Aspects of disability law in Africa* (2011) 133, 138.

³² See article 24 of the CRPD.

³³ Article 24(1) of the CRPD.

³⁴ Katherine Guernsey, Marco Nicoli and Alberto Ninio 'Convention on the Rights of Persons with Disabilities: Its implementation and relevance for the Bank', *The World Bank*, (2007) (hereafter World Bank) 13.

countries such as Zimbabwe to meet the obligations created by Article 24, they must increase the accessibility of their educational spaces, develop inclusive curricula and provide adequate learning assistance.³⁵ This is particularly important in light of the Millennium Development Goal of “education for all,” which by definition, cannot be attained if an entire segment of any given population is denied equal access to education.

2.4.1 Inclusive education

State Parties should realise, without discrimination and on the basis of equal opportunity, the right of PWDs to education. The phrase ‘without discrimination and on the basis of equal opportunity’ suggests that States Parties are bound to take affirmative action measures to improve access to education by persons with disabilities. To realise the right to education on the basis of equality and without discrimination, States Parties are bound to ensure the provision of inclusive education at all levels. Inclusive education is a process of addressing and responding to the diversity of all needs of all learners by increasing participation (especially by CWDs) in learning cultures and communities, and reducing exclusion within and from education.³⁶ It is a process which requires schools to accommodate all children regardless of their physical, intellectual, social, emotional, linguistic or other conditions.³⁷ *The nature of inclusion varies and largely depends on the nature of the disability and the school environment.* In some schools, inclusion means the mere physical presence or social inclusion of CWDs children with disabilities in regular classrooms. In other schools, inclusion means active modification of content, instruction, assessment practices and the school environment so that learners can successfully engage in core academic experiences and learning. If policies, contents and teaching approaches are not adapted to the diversity of the learners, CWDs will not have the conditions to learn effectively the skills that will allow them to be successful in life.

2.4.2 General States Parties’ obligations

³⁵ World Bank, 13.

³⁶ UNESCO, 2003.

³⁷ UNESCO, 1994.

Article 4 of the CRPD enumerates general States Parties' obligations. These obligations apply to all the rights, including the right to education, protected in the CRPD. Under the CRPD, 'States Parties undertake to ensure and promote the full realization of all human rights and fundamental freedoms for all PWDs without discrimination of any kind on the basis of disability'.³⁸ All the rights recognized in the CRPD have an equality dimension implying that every PWDs must not be discriminated against in the enjoyment of rights protected in the CRPD. In particular, the State should ensure that individuals exercise their full rights and freedoms without discrimination on the basis of disability. To achieve this dignified purpose, States Parties undertake to do certain things. States Parties should 'adopt all appropriate legislative, administrative and other measures for the implementation of the rights recognized in the' CRPD. These measures, which include legislation, should be designed 'to modify or abolish existing laws, regulations, customs and practices that constitute discrimination against PWDs'.³⁹ Given the prevalence of cultural practices which constitute discrimination against PWDs, the passage of legislation modifying these practices is very important in the Zimbabwean context. When designing and implementing policies and programmes, States parties should factor in the protection and promotion of the human rights of PWDs.⁴⁰ States Parties are also bound to refrain from engaging in practices that are inconsistent with the CRPD and to ensure that public authorities and institutions act in line with the CRPD.⁴¹ Discrimination against PWDs is also common in the private sphere. Thus, the CRPD binds States Parties 'to take all appropriate measures to eliminate discrimination on the basis of disability by any person, organization or private enterprise'.⁴² This provision makes it clear that the CRPD applies vertically and horizontally. It outlaws discrimination against CWDs in private homes, private schools and other juristic persons. Thus, it is the duty of States to adopt measures designed to prevent or curb discrimination against CWDs in private schools and other educational institutions.

States Parties are also duty-bound to undertake or promote research and development of universally designed goods, services, equipment and facilities (which should require the minimum possible adaptation and the least cost) to meet the specific needs of PWDs. This

³⁸ Article 4(1).

³⁹ Article 4(1)(a) and (b).

⁴⁰ Article 4(1)(c).

⁴¹ Article 4(1)(d).

⁴² Article 4(1)(e).

research and development should promote the availability and use of universally designed equipment and facilities.⁴³ In terms of the CRPD, "universal design" means the design of products, environments, programmes and services that are usable by all people, to the greatest extent possible, without the need for adaptation or specialized design. "Universal design", however, does not exclude assistive devices for particular groups of PWDs where these are needed.⁴⁴ Clearly, universal design of goods, services, equipment and facilities is important for purposes of facilitating reasonable accommodation of the rights and needs of CWDs in the school environment. This is a pertinent command for countries (such as Zimbabwe) that have buildings, environments, books and facilities that were primarily designed for use by persons without disabilities.

Further, the CRPD recognises that there is need for States Parties 'to undertake or promote the availability and use of new technologies, including information and communications technologies, mobility aids, devices and assistive technologies, suitable for PWDs, giving priority to technologies at an affordable cost'.⁴⁵ States should also ensure that information about these technologies and devices is accessible to PWDs.⁴⁶ Thus the State should provide the required information in the format which the relevant PWDs can understand. It is also imperative for States Parties to promote the training of professionals and staff working with PWDs in areas covered by the rights recognized under the CRPD so as to better provide the assistance and services guaranteed by those rights. In the context of the right to education, the need to train professionals is important to ensure that CWDs, for instance those that are deaf and dumb are taught in the language that they understand. In implementing economic, social and cultural rights, 'each State Party undertakes to take measures to the maximum of its available resources ... with a view to achieving progressively the full realization of these rights'. This obligation is 'without prejudice to those obligations contained in the [CRPD] that are immediately applicable according to international law'.⁴⁷ The CRPD recognises that socio-economic rights impose obligations that are immediate and States Parties should not plead resource scarcity when they fail to fulfil these obligations.

⁴³ Article 4(1)(f).

⁴⁴ Article 2.

⁴⁵ Article 4(g).

⁴⁶ Article 4(h).

⁴⁷ Article 4(2).

In developing and implementing legislation and policies domesticating the CRPD, and in other decision-making processes concerning issues relating to PWDs, States Parties are required to 'closely consult with and actively involve PWDs, including CWDs, through their representative organizations'.⁴⁸ This obligation underlines the importance of inclusion of CWDs, in the making of policies and laws that affect them. Clearly, the inclusion of CWDs in the formulation and implementation of laws and policies enriches the process and ensures that these measures respond to the challenges which CWDs face, even in the context of access to education. The need to include CWDs is an open acknowledgement that CWDs face peculiar challenges which other categories do not face or do not face to the same extent. The obligation to include PWDs also furthers participation of PWDs as one of the general principles underlying all the provisions of the CRPD.⁴⁹ Where the protection afforded to particular rights under the CRPD is limited than that afforded to such rights under national laws or other international instruments to which the State is Party, the State is bound to fulfil these rights as is required by national laws or by such other instruments.⁵⁰ This provision is intended to ensure that States Parties do not deny PWDs certain rights on the basis that the CRPD either does not protect such rights or protects such rights to a limited extent.

2.4.3 Specific States Parties' Obligations

Article 24 of the CRPD outlines the obligations imposed on States Parties by the right of PWDs to education. It provides that States Parties shall ensure that PWDs are not excluded from the general education system on the basis of disability.⁵¹ This provision documents the international community's awareness of the discrimination that CWDs face on the basis of their disability. Children with disabilities should not be denied access to the general education system simply because of their disabilities. States Parties are also bound to provide free and compulsory primary education and secondary education to PWDs. This provision is intended to ensure that parents and the State do not discriminate against CWDs in the name of feeling sorry for them. States Parties are required to ensure that PWDs can access an inclusive, quality and free

⁴⁸ Article 4(3).

⁴⁹ See article 3.

⁵⁰ Article 4(4).

⁵¹ Article 24(2)(a) of the CRPD.

primary education and secondary education on an equal basis with others in the communities in which they live.⁵²

Levelling the playing field would require the State to take positive measures to ensure that CWDs have equal access to educational opportunities which their non-disabled counterparts enjoy. In realizing the right of PWDs to education, States Parties should ensure that reasonable accommodation of the child's requirements is provided.⁵³ Reasonable accommodation of the child's requirements implies that the learning environment be adapted to the needs and rights of such child. Sometimes it may even mean introducing new subjects such as sign language or the hiring of teachers trained in disability issues to cater for the needs of the children concerned. States Parties should also ensure that PWDs receive the support they require, within the general education system, to facilitate their effective education.⁵⁴ Further, States Parties should ensure that effective individualized support measures are provided in environments that maximize academic and social development, consistent with the goal of full inclusion.⁵⁵ These clauses are crafted to ensure that both curricula and educational settings respond to the individual support needs of learners with disabilities. To this end, Article 24(3) of the CRPD require States Parties to facilitate the learning of Braille; alternative script; sign language; alternative modes, means and formats of communication; orientation and mobility skills.⁵⁶

States parties should also ensure the promotion of the linguistic identity of the deaf community. They should ensure that the 'education of persons, and *in particular children*, who are deaf or blind, 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'.⁵⁷ The duty to meet various support needs of learners with disabilities gets specific as Article 24 unfolds. Thus, States Parties are required to 'take appropriate measures to employ teachers, including teachers with disabilities, who are qualified in sign language and/or Braille, and to train

⁵² Article 24(2)(b).

⁵³ Article 24(2)(c).

⁵⁴ Article 24(2)(d).

⁵⁵ Article 24(2)(e).

⁵⁶ Article 24(3)(a) and (b).

⁵⁷ Article 24(3)(c).

professionals and staff who work at all levels of education'.⁵⁸ The curriculum should incorporate disability awareness and the use of appropriate alternative modes of communication, educational techniques and materials to support PWDs.⁵⁹

The fact that Zimbabwe ratified the CRPD goes a long way in enhancing the prospects for the realization of the rights of CWDs. While the provisions of the CRPD are not automatically binding due to the dualist approach to international law, the CRPD provisions nevertheless have persuasive value in the courts by virtue of Zimbabwe being a state party. For now at least, the ratification of the convention is a first positive step towards the domestication of its provisions.

3.The Zimbabwean legal framework

Starting with the provisions of the new Constitution, this section analyses the legislative protection extended to the right to education in Zimbabwe. Other statutes discussed include the Education Act; the Disabled Persons Act and the Mental Health Act. While there are other statutes (such as the Children's Act) that may have an indirect impact on access to education by CWDs, the three statutes mentioned above are the most pertinent.

3.1 Equality under the Zimbabwean Constitution

The new Constitution provides that every person has the right not to be treated in an unfairly discriminatory manner on such grounds as disability, economic or social status.⁶⁰ Equality entails that 'the State...take[s] reasonable and other measures to promote the achievement of equality and to protect or advance people or classes of people who have been disadvantaged by unfair discrimination'.⁶¹ No wonder the equality clause provides that no affirmative action measure is to be regarded as unfair for the purposes of subsection 3.⁶² It is important that the Constitution permits affirmative action in favour of persons historically disadvantaged by unfair discrimination. Affirmative action means preferential treatment of historically disadvantaged

⁵⁸ Article 24(4).

⁵⁹ Article 24(4).

⁶⁰ Section 56(3) of the Constitution.

⁶¹ Section 56(6). Compare with section 9(2) of the South African Constitution, 1996.

⁶² Section 56(6)(b).

categories of persons. Laws which discriminate based on any of the stated grounds do not violate the prohibition of discrimination to the extent that the laws in question relate to 'the implementation of affirmative action programmes for the protection or advancement of persons or classes of persons who have been previously disadvantaged by unfair discrimination'.⁶³

An affirmative action programme requires 'a member of a disadvantaged group to be preferred for the distribution of some benefit over someone who is not a member of that group'.⁶⁴ Affirmative action should not be seen as an exception to the equality or non-discrimination clause, but rather as part of the right to equality. It is a tool which the State can use to design remedial measures and programmes to achieve, in the long term, a more just and equal society. Thus, section 56 imposes on the State a positive duty to act in order to ensure that everyone fully and equally enjoys all fundamental rights and freedoms. Remedial or restitutionary measures do not constitute derogations from, but are composite parts of the right to equality and non-discrimination.

Preferential treatment targeted at protecting or advancing persons disadvantaged by unfair discrimination is therefore justifiable and constitutionally defensible provided the measures are shown to be consistent with section 56 of the Constitution. In Sachs J's words, 'differential treatment that happens to coincide with [disability] *in the way that poverty and civic marginalisation coincide with [disability]*, should [not] be regarded as presumptively unfair discrimination when it relates to measures taken to overcome such poverty and marginalisation'.⁶⁵ In the context of the right to education, it is therefore fairly legal for the State to take remedial measures to benefit significantly disadvantaged persons such as CWDs because the long-term result of such measures is a more just society. In the event that the measures are challenged as a violation of the equality clause, the State or person responsible for the measure can then defend it by demonstrating that the measure (1) targets persons or categories of persons who have been disadvantaged by unfair discrimination; (2) is designed to

⁶³ Section 23(3)(g) of the Constitution.

⁶⁴ I Currie and J De Waal *The Bill of Rights handbook* Fifth Edition, (2005) 264.

⁶⁵ *City Council of Pretoria v Walker* 1998 2 SA 363 (CC) para 118.

protect and advance such persons or categories of persons and (3) promotes the achievement of equality.⁶⁶

Children with disabilities squarely fall within these criteria and should benefit from preferential treatment in the provision of amenities at schools and other institutions. This is consistent with the notion of substantive equality. Unlike formal equality, which requires uniform treatment of persons according to the same 'neutral' norm, substantive equality requires that persons in unequal circumstances be treated unequally in order to address the imbalance caused by systematic marginalization.⁶⁷ The motivation behind the substantive approach to equality is that 'past unfair discrimination frequently has ongoing negative consequences, the continuation of which is not halted immediately when the initial causes thereof are eliminated'.⁶⁸ In fact, the effects, unless corrected, may continue for a substantial time or even indefinitely. As noted by the UN Human Rights Committee, the equal enjoyment of rights and freedoms does not mean identical treatment in every instance. Equality, notes the Committee, may require states to adopt specific affirmative steps to eliminate or dismantle structures and practices perpetuating patterns of disadvantage.⁶⁹ There are, in this country, clearly defined historical patterns of institutionalized disadvantage that have burdened CWDs for decades and undermined their achievement in and outside the classroom. Whilst there is no direct reference to substantive equality in the context of the right of CWDs to education, it is clear that substantive equality mirrors all the other rights in the Fundamental Rights Chapter.

Besides the general right to education to which 'every citizen and permanent resident of Zimbabwe' is entitled⁷⁰ and the specific reference to children's right to education,⁷¹ the Constitution provides that the state must take appropriate measure, within the resources

⁶⁶ See the leading South African case of *Minister of Finance v Van Heerden* (2004) 6 SA 121 (CC) paras 32 and 37.

⁶⁷ See A Moyo 'Defending human rights and the rule of law by the SADC Tribunal: *Campbell* and beyond' (2009) 9 *African Human Rights Law Journal* 590, 604;

⁶⁸ *National Coalition for Gay and Lesbian Equality v Minister of Justice* 1999 1 SA 6 (CC), paras 60-61; See also *President of the Republic of South Africa v Hugo* 1997 4 SA 1 (CC) para 41.

⁶⁹ United Nations Human Rights Committee 'CCPR General Comment 18: Non-discrimination' <http://www.unhchr.ch/tbs/doc.nsf/0/3888b0541f8501c9c12563ed004b8d0e?Opendocument> (accessed 10 April 2008) para 8.

⁷⁰ Section 75 of the Constitution.

⁷¹ Section 81 of the Constitution.

available to it, to ensure that PWDs enjoy their full potential. These measures include those intended to provide both special facilities for their education and state-funded education when they need it.⁷² These provisions bind the State to ensure that reading materials are supplied in Braille for children with visual disabilities and to meet all the needs of CWDs in the school environment. Further, the State is required to take appropriate steps to ensure that buildings and amenities to which the public have access are accessible for use by PWDs.⁷³ Schools are therefore required to ensure that classrooms, offices and toilets are built in a way that fosters reasonable accommodation of CWDs. Thus, the constitutional provisions on equality and education largely comply with the demands of the CRC and the CRPD.

3.2 The Disabled Persons Act

The Disabled Persons Act (DPA) deals exclusively with disability matters. The DPA is not framed in the language of human rights and revolve around the duty of the state and private actors to promote the welfare and rehabilitation of PWDs. Further, there is no reference to the word 'child' or 'children' throughout the DPA. Nonetheless, the DPA establishes a National Disability Board (NDB) and confers on it the functions of (i) issuing adjustment orders and (ii) fashioning policies that are accommodative of the rights of PWDs. It must be stated, from the onset, that the NDB has had little or no tangible achievements since it was established.

3.2.1 Adjustment orders

One of the functions of the NDB is to issue adjustment orders in terms of section 7 of the DPA.⁷⁴ Before serving an adjustment order, the NDB should serve notice upon the person concerned. The notice must specify 'the grounds upon which the adjustment order is to be issued and the nature of the action which the Board considers necessary to rectify the situation which has given rise to the proposed order'; stipulate the maximum period that the Board considers reasonable for the implementation of the action it proposes to order; and call upon the person concerned, if he wishes to make representations, to make them to the Board within thirty days from the date

⁷² Section 83(e) and (f); see also section 22.

⁷³ See for instance section 22(4) of the Constitution.

⁷⁴ Section 5(1)(a) of the DPA.

of the service of the notice.⁷⁵ After considering any representations made, the NDB may issue, or refrain from or defer issuing, an adjustment order.⁷⁶

Section 7(2) of the DPA states that 'where the Board considers that any premises, services or amenities are inaccessible to disabled persons by reason of any structural, physical, administrative or other impediment to such access, the Board may ... serve upon the owner of the premises or the provider of the service or amenity concerned an adjustment order'. An adjustment order must set out, among other things, the grounds upon which the Board considers that the premises, service or amenity is inaccessible to disabled persons.⁷⁷ The adjustment order should require the 'owner or provider concerned to undertake at his own expense such action as may be specified in order to secure *reasonable access* by disabled persons to the premises, service or amenity concerned' and stipulate the period within which the action [should] be commenced and completed'.⁷⁸ Should the person upon whom the adjustment order is served elect not to appeal to an Administrative Court (which can confirm, vary or set aside the adjustment order appealed against),⁷⁹ such person should comply with the adjustment order as issued by the NDB. This requirement is enforced on the pain of criminal sanctions as any person who contravenes an adjustment order with which it is his duty to comply shall be guilty of an offence and liable to a fine not exceeding level seven.⁸⁰ The DPA seeks to revolutionise the way public and private service providers perform their functions. Thus, institutions, including schools, with premises, facilities and amenities that are not easily accessible to PWDs are bound to take steps to 'secure *reasonable access* by disabled persons to the premises, service or amenity concerned'.

The concept of 'reasonable access by disabled persons' is consistent with the idea of 'reasonable accommodation' as applied at international law. At international law, 'reasonable accommodation' means necessary and appropriate modification and *adjustments*...to ensure to PWDs the enjoyment or exercise on an equal basis with others of all human rights and

⁷⁵ Section 7(3)(a)-(c) of the DPA.

⁷⁶ Section 7(4) of the DPA.

⁷⁷ Section 7(2)(a)(ii) of the DPA.

⁷⁸ Section 7(2)(b) and (c) of the DPA.

⁷⁹ Section 7(5) and (6) of the DPA.

⁸⁰ Section 7(8) of the DPA.

fundamental freedoms'.⁸¹ Adjustment orders can be utilized to ensure that school buildings and environments can be easily accessed by CWDs. Thus, the issuance of adjustment orders has implications for the enjoyment of access to education by CWDs. This is particularly so in most parts of rural Zimbabwe where entrances to classrooms, toilets and other facilities have staircases and are therefore largely inaccessible to children on crutches and wheelchairs. Furthermore, very few buildings (especially old ones), let alone general school buildings, have ramps with rails to enable persons with visual disabilities to move around with ease. While many new buildings in urban areas have ramps, the recommended gradient of the ramps is rarely adhered to. Many (school) buildings also lack signs to indicate where the disabled person's entrance, elevators or toilets are located. The visually impaired are disadvantaged by buildings with no guiding rails, elevators with no recorded voice, and elevators too small or narrow to accommodate wheelchairs.

Given the plight of CWDs in our education system, one would expect the NDB to issue adjustment orders to almost all schools to ensure reasonable accommodation of learners with disabilities, but this, to our knowledge, has not happened. In the end, children with disabilities confront many physical and environmental barriers to equal access to education in spite of the fact that the law foresees and authorizes the removal of such barriers. The realization of the right of CWDs to education largely depends on whether the NDB exercises its functions effectively. From an access to education perspective, the situation is pathetic because the NDB should not 'serve an adjustment order upon any school or educational or training institution controlled or managed by the State or registered in terms of the Education Act ...*except with the consent of the Minister responsible for the administration of the institution or Act concerned*'.⁸² Therefore, the Minister of Education, Sport and Culture is vested with the authority to decide whether the NDB should issue an adjustment order to schools to ensure that their needs and rights are reasonably accommodated. These procedural formalities potentially undermine CWDs' right to education.

3.2.2 Policy formulation

⁸¹ See article 2 of the CRPD.

⁸² Section 7(7)(b) of the DPA.

The NDB has the statutory mandate to formulate and develop measures and policies designed (i) to achieve equal opportunities for disabled persons by ensuring...that they obtain education..., participate fully in sporting, recreation and cultural activities and are afforded full access to community and social services; (ii) to enable disabled persons to lead independent lives; (iii) to prevent discrimination against disabled persons resulting from or arising out of their disability.⁸³ In the context of education, ensuring equal opportunities for PWDs would require the State to monitor whether private and public schools are accommodative of CWDs. This ties in well with the NDB's power to formulate policies which prevent disability-based discrimination against persons PWDs. Another problem with the Act is that the development of disability-friendly policies is left to the discretion of the NDB. Thus, the rights of CWDs are at the mercy of the NDB which is under no direct binding legal obligation to act as required.

3.3 The Education Act

Under the Education Act, every child has the right to school education.⁸⁴ Although the Education Act promotes education for all, education has not practically been for all CWDs. The Education Act outlaws discrimination based on a closed list prohibited ground of discrimination. This list excludes disability. It is arguable that when the Education Act became law, disability was not considered an important issue in the human rights debate; at least in Zimbabwe. This gap is now been addressed by the recently adopted 2013 Constitution.

4. A case study of Mwenezi District

Mwenezi is a predominantly rural area; with small pockets of growth points. It is located in the Southern-most part of Masvingo Province. There are 119 primary and 38 secondary schools in the District but with no special school. Furthermore, there are eight Resource Units in Mwenezi District (some of these Units are not functional due to lack of funding). Until the launch of fast-track land reform, more than half the landmass of the District historically formed part of cattle- and game-ranging farms. These farms invariably had few or no schools built in them. In the aftermath of the land-reform process, newly established communities had to build schools. A

⁸³ Section 5(1)(b)(i), (ii) and (iv) of the DPA.

⁸⁴ Section 4(1) of the Act.

common feature of these schools is that they have few or no qualified teachers – as teachers are hesitant to work in these areas due to water shortages and long distances to busy roads. In this section, we document the number of CWDs at the schools we visited; give a brief analysis of data and discuss in detail the challenges confronting CWDs in Mwenezi and other rural districts. While there may be variations from one district to another, we are of the view that many of the findings we made, especially concerning impediments to access to education in rural areas, potentially apply to the rest of the country.

4.1 Children with disabilities in rural schools

This section tabulates data on CWDs in some of the schools in Mwenezi District as follows.

Name of School	No. of CWDs	Sex	Grades	Disability
Chovuronga Primary School	8	4 Females 4 Males	4 in grade 1; 1 in grade 3; 1 in grade 4; 1 in grade 6; 1 had no stated grade.	2 ill-health; 1 short-sighted; 1 mentally retarded; 1 visually impaired; 1 short right leg; 1 speech difficulties
Masogwe Primary School	11	4 Females; 7 Males	3 in grade 1; 4 in grade 2; 4 in grade 4;	4 mentally retarded; 2 speech problem; 2 hearing impairment; 1 down syndrome; 1 epileptic and cerebral pulse; 1 club foot
Rata Primary School	53	25 females; 28 males	18 ECD; 1 had no stated; 3 resource unit; 8 in grade 1; 6 in grade 2; 3 in grade 3; 5 in grade 4; 2 in grade 5; 3 in grade 6; 4 in grade 7	10 jaws and palate; 4 tongues not rolling; 2 cross-eyed (these were part of the 4 that were in grade7); 9 impaired hearing ;1 hydrocyphulus; 5 ill- health; 4 physical impairments; 6 were hyperactive; 7 learning disabilities; 2 socially deprived; 2 mentally challenged; 1 hypertension
Chikadzi Primary School	75	26 females; 49 males	1 in grade 0; 8 in grade1; 7 in grade 2; 17 in grade 3; 7 in grade 4; 5 in grade 5; 28 in grade 6; 2 in grade 7	50 learning disabilities; 9 deprivation; 5 hearing problems; 2 mentally problem; 2 ill health; 1 hyperactive; 1 speech problem; 1 deaf and dump; 1 deformity on the left

				hand ; 1 down syndrome; 2 hydrocyphalus
Shazhaume Primary School	11	2 females; 9 males	2 ECD; 1 in grade 4; 1 in grade5; 1 in grade 6; 1 in grade7	mentally retarded;
Chengwe Primary School	7	4 females; 3 males	1 in grade1; 2 in grade2; 1 in grade 4; 1 in grade 5; 2 in grade7;	1 skin disease; 1 amputated arm; 1 paralysed; 3 mentally retarded ; 1 one-eyed
Boterere Primary School	3	2 females; 1 male	2 in grade1; 1 in grade4	1 feet without toes; 1 one-eyed; 1 impaired hearing
Mwanezana Primary School	3	2 females; 1 male;	1 in grade4; 1 in grade 5; 1 in grade 6	2 impaired hearing; 1 down syndrome
Munyamani Primary School	7	2 females; 5 males	2 ECD; 1 in grade1; 1 in grade 2 ; 2 in grade3; 1 in grade 5;	1 impaired hearing; 1 short arm; 1 speech difficulties; 1 deformed foot; 1 deformed leg; 2 damaged eyes
Rushumbe Primary School	6	3 females; 3 males	3 in grade 1; 2 in grade 1; 1 in grade 3	3 visual impairment; 3 hearing difficulties
Ruzambu Primary School	6	2 females; 4 males	1 ECD; 2 in grade 1; 1 in grade 2; 1 in grade 6; 1 in grade 7	3 physically handicapped; 1 mentally retarded; 1 visually impaired; 1 speech defects
Msaverima Primary School	17	6 females; 11 males	7 resource unit; 2 in grade 1; 1 in grade 2; 3 in grade 3; 2 in grade 5; 2 in grade 7	4 cerebral pulse and 1of the four hydrocephalus; 5 mentally challenged; 3 visual impairments; 2 physical disabilities and of two one wheelchair bound; 1 impaired hearing ; 1 hydrocephalus
Vinga Primary School	6	3 females; 3 males	2 in grade 1; 1 in grade 3; 1 in grade 5; 2 in grade 6	3 physically handicapped and(all had problems with one leg each); 2 visually impaired; 1 impaired hearing
Machena Primary School	9	6 females; 3 males	2 in grade 1 ; 2 in grade 2; 2 in grade 3; 2 in grade 4; 1 in grade 6	5 mentally retardation; 1 deaf and dumb; 1 grooved leg; 2 eye sight problems and one of them had a burnt face;
Rutenga Primary School	9	6 females; 3 males	1 ECD; 2 in grade 1; 2 in grade 3 ; 1 in grade 4; 1 in grade 5; 2 in grade 7	3 visually impaired; 3 mental defects; 3 physical disabilities;
Negari Primary School	17	7 females ; 10 males;	2 in grade 1 ; 1 in grade 2; 1 in grade 3; 1 in grade4; 2 in grade 5; 2 in grade 6; 8 in grade 7	6 impaired hearing; 7 physically handicapped ; 2 visually impaired; 2 mentally retarded
Bemberero Primary School	1	1 female	1 in grade 0	Physical disability
Matande Primary School	24	15 males; 9 females	2 ECD; 1 in grade 2; 9 in grade 3 ; 3 in grade 4; 1 in grade 5; 5 in grade 6 ; 3 in grade 7	12 impaired hearing; 9 mentally retarded; 2 speech defects; 1 physical disability;

Zvirikure Primary School	27	The sex was not mentioned	4 in grade 0; 5 in grade 2; 5 in grade 3; 1 in grade 4; 4 in grade 5; 7 in grade 6; 1 in grade 7	13 mentally challenged; 3 impaired hearing; 3 ill health; 3 social disability; 2 hyperactive; 2 learning disabilities ; 1 visually impaired
Mavambo primary	16	9 females; 7 males	5 in grade 0 ; 6 in grade 1; 1 in grade 3; 2 in grade 4; 1 in grade 5; 1 had no clearly known grade	3 impaired hearing; 3 visually impaired; 4 polio; 2 dumb; 1 down syndrome; 1 hydrosyphilis ; 1 hyperactive; 1 deferred speech;
Mushonganeburi Secondary School	2	1 female ; 1 male	1 in form 3; 1 in form 1	1 club foot; 1 single eye
Budirirai High	3	2 males; 1 female	Their forms were no stated	1 deaf; 1 mentally retarded; 1 paralysed hand
Gukuku Secondary School	3	3 females	Their forms were not clear from the papers	1 albinism; 1 broken right hand; 1 deformed middle toe

4.2 Analysis of data

There are few CWDs in Zimbabwe's rural schools. Many schools are sparsely located; have big catchment areas and have very few (often less than 10) CWDs. This trend potentially shows that many CWDs do not even reach the classroom. It is highly likely that schools such as Chikadzi (educating 75 CWDs) and Rata (with over 50 CWDs) have many CWDs because these schools have partnered with local communities and traditional leaders. The fact that the catchment areas of these schools are big only tells part of the story as other schools that have even bigger catchment areas are failing to attract CWDs. Furthermore, community leaders surrounding these successful schools indicated that they were certain that a significant number of CWDs were out of school. The situation is worse for children living in the resettlement areas as they have to travel long distances to schools. Those with physical and other related disabilities find it difficult to walk to distant schools in areas where poor road networks collude with poor public transport systems to deny CWDs access to education.

Generally, there are more CWDs in lower grades than in higher grades or secondary schools. Very few CWDs complete their primary education as many of them, especially girls, drop out for

different reasons. Arguably, the education system – usually designed by able-bodied people to serve able-bodied children – is not well-equipped and resourced to retain CWDs once they are enrolled at schools. It was apparent from the respondents interviewed that CWDs withdraw from school. Chief among reasons for withdrawal are the inability of teachers and other learners to respond positively to the rights of CWDs and the existence of school environments that are not adapted to the needs of CWDs. The invisibility of CWDs in secondary schools is also a result of poverty and the failure by parents to pay the required tuition fees and other levies. Almost all parents earn a living from subsistence farming and live below the poverty line.

District-level data collected by the Ministry of Education is primarily concerned with primary school CWDs. This suggests that the focus of the State and even families, at the moment, is on enhancing ‘equal’ access to primary education. Unfortunately, CWDs need more than primary education for them to learn life skills. At a deeper level, the fact that efforts are concentrated at primary school level may be reflective of a ‘national consensus’ that CWDs are not able to comprehend issues beyond primary school level. Further, there are more male CWDs in schools, especially at higher levels, than girls. Whilst the numbers are usually even from the Early Childhood Development (ECD) level up to about grade four, the number of girls enrolled in schools dramatically dwindles from grade five to grade seven. This observation suggests that there are other factors which push girls away from school once they have enrolled. This trend could be a result of multiple social, cultural and environmental factors which hinder girls from enjoying equal opportunities in accessing education. Below, we analyse factors that are generally understood to impede access to education by CWDs in rural Zimbabwe.

4.3 Impediments to access to education in Mwenezi District

Lack of resources; long distances to school, poor road networks and transport systems; lack of special schools in the district; social, cultural and attitudinal factors and environmental barriers emerged as some of the leading impediments to access to education in Mwenezi’s rural schools. Below, we explain the degree to which each of these factors impedes access to education by CWDs.

4.3.1 Inadequate resources

Inadequate resources are one of the factors that contribute to the marginalisation of CWDs; especially in the context of the right to education. The lack of resources takes various dimensions. Firstly, there is inadequate financial support for PWDs, let alone CWDs at district and school level. One rarely sees anything about PWDs in national budgets or policy documents. This is perhaps not surprising given the inadequate political representation of this category of persons. The only form of assistance offered by the government is the Basic Education Assistance Module (BEAM). The programme targets children who have never been in or have dropped out of school due to economic hardship and children in school but failing to pay levies, tuition and examination fees due to financial hardships. The following criteria are used in the selection of beneficiaries:

- Children who have never been to, or have dropped out of school due to poverty;
- School record of child's previous failure to pay fees and levies due to poverty;
- The source of income and health status of the head of household or breadwinner;
- Whether the potential beneficiary is an orphan and
- Household asset ownership of the guardians of potential beneficiaries.

Whilst the government should be commended for this policy, the problem is that it does not specifically address the educational needs of the most vulnerable groups such as CWDs. For instance, the policy targets children who have never been to, or have dropped out of school due to poverty. This is a noble idea, but the truth of the matter is that many children have never been to, or have dropped out of school due to (stigma associated with) disabilities. There is exclusive focus on financial means than on physical attributes such as psychological and other impairments. As many respondents pointed out, schools are result-based and BEAM cannot concentrate on the needs of CWDs.⁸⁵ There is need for a programme that gives preferential treatment to CWDs at every level of the education system.

Secondly, there is lack of adequate support devices such as hearing aids and other specialised equipment and materials for CWDs. This is a common feature in almost all the Resource Units in Mwenezi District. Most of these devices are expensive and are not locally available. There is

⁸⁵ The same point was emphasised by participants at a Workshop held by the Disability Rights Project of Midlands State University at Mutare on the 12th of July 2012.

need to consider developing cheap and locally available devices. Further, the State should fund all the school projects for CWDs to avoid situations – common in Mwenezi – where parents and local communities put funds together to sustain the available Resource Units. In fact, there were reports that while eight Resource Units existed on paper, lack of funding had long made some of them non-functional.

Thirdly, there is over-reliance on donor support for the purchase of relevant equipment and devices needed by the Resource Units. As pointed out by Mr Shumba at the district offices of the Ministry of Education, reliance on donor support poses a challenge to the sustainability of various projects as donors gradually pull out of the district. In any event, many projects have timelines within which they should be completed and it is often the case that they pull out as per their schedule. The pulling out of donor support and inadequate funding by the State can lead to (a) general shortage of books, science equipment and other essential learning facilities, (b) poor students' performance due to lack of books and other teaching materials, (c) low moral among teachers as a result of poor salaries and other working conditions, and (d) lack of attraction and retention of qualified teachers because of poor amenities in rural areas.⁸⁶ This can lead to lack of commitment towards CWDs as teachers see such learners as an additional burden for which they should be incentivized.⁸⁷ It is against this background that the government and other local organisations should devise mechanisms for ensuring the sustainability of projects targeted at CWDs.

Finally, there are inadequate human resources to cater for the needs of CWDs in all primary and secondary schools. There are inadequate multidisciplinary personnel to cater for all the special needs of CWDs in the schools. To address this anomaly, teachers and parents should be encouraged, if not required, to attend training courses at Centres that are designed to equip relevant persons with coping strategies and to teach communities how to care for CWDs. These measures should go a long way in helping communities understand that inclusion is not an add-

⁸⁶ See also GY Kanyongo 'Zimbabwe's public education reforms: Successes and challenges' (2005) 6(1) *International Education Journal* 65, 72.

⁸⁷ This attitude is prevalent among teachers who did not receive relevant training on how to handle disability in the school environment.

on, but a natural extension of promising research-based education practices that positively affect the teaching and learning of all learners.⁸⁸

4.3.2 Distance to school, poor road networks and transport systems

There is general consensus in Mwenezi District that schools are far much spaced than should be the case. In the communal areas that existed when Zimbabwe attained independence in 1980, primary schools draw pupils from an approximate distance of seven to eight kilometres in every direction. For secondary schools, the distance can be as long as 9-10 kilometres. Many primary and secondary school children living in villages and communities established as a result of the land reform programme have to travel for longer distances since there are few schools in these communities. Long distances to schools collude with poor road networks and transport systems to deny CWDs the right to education. In fact, this is part of the reason why there are fewer Resource Units than there should be in the district as many children live in remote areas that are poorly connected to functioning schools and other centres of activity.

Given that the majority of parents and caregivers live below the poverty-datum line, often in abject poverty, many CWDs remain confined to the family home. The roads that link old growth points, schools and communities are rarely repaired or maintained, let alone those that link remote or new villages and new schools established after fast-track land reform. There is need to maintain existing roads and to construct other roads to link remote areas to existing schools to encourage road transport owners to commute to these places. This is particularly so for most of the areas that became communal areas following the land reform programme. Previously, these areas had numerous game- and cattle-ranching farms with no or few schools close to them.

However, maintaining roads and improving the public transport system will not necessarily guarantee equal access to education for CWDs as these children have to contend with negative attitudes on disability by minibuss operators. Reports elsewhere have indicated that even in urban and peri-urban areas, many CWDs have to be pushed to school because those providing the local minibus services are unwilling to take the time and trouble to load up a child in a

⁸⁸ K Ryan and JM Cooper *Kaleidoscope: Contemporary and classic readings in education*, 12th Edition (2009).

wheelchair.⁸⁹ There are so many cases of public buses refusing to take a child in a wheelchair. This makes transport home a nightmare. Nonetheless, this is not to say that better roads and the public transport system will not make any difference. Coupled with awareness campaigns on disability, better roads and an efficient public transport system will place many more CWDs in school.

4.3.3 Lack of special schools in the District

There are no special schools for CWDs in Mwenezi District. This is a setback for children with multiple or severe disabilities that cannot be easily addressed by teachers in inclusive settings. Teachers without specialised training will no doubt find it difficult to pitch the discussions at the levels which children with severe or multiple disabilities would understand. Many children have to travel to Copota School of the Blind, Morgenster School for the Deaf and many other distant special schools for purposes of accessing basic education. Unfortunately, very few parents can afford to pay the fees required for their children to attend these special schools. These schools are 'expensive' and the majority of parents cannot raise the required fees as the parents are often unemployed and have no regular source of income. The distance from Mwenezi district to the provincial capital, Masvingo, ranges from 110 to 280 kilometres, depending on which part of the district one lives. Thus, it can be difficult for parents to get even bus fare to visit special schools in the provincial capital where many special schools are located.

The only forms of special schools in the district are Resource Units. These are classrooms in ordinary schools dedicated to children (with varying degrees of physical, visual and hearing impairments) who can cope with the demands of ordinary schools. Resource units are manned by specialist teachers and provide integrated educational set-ups for CWDs. The government requires that a resource unit be established at a school if there are seven or more children with the same disability. The problem with this policy is that there can be as many as six children with the same disability or many children with different, but the school is not allowed to establish a Resource Unit. In any event, these Resource Units are poorly funded.

4.3.4 Social, cultural and attitudinal barriers

⁸⁹ See King George VI Children's Centre and School 'Disability in Zimbabwe', Background Paper, available at <http://www.kinggeorge6.org/Home/the-centre/disability-in-zimbabwe> (accessed 28 June 2012).

Negative attitudes, beliefs and stigma against disability are prevalent in Zimbabwe. It is disheartening to note that very few school heads; teachers and children are willing to associate with CWDs. Historically, CWDs were considered burdens to the family and to the community. Children with disabilities were also thought to have been unnaturally conceived and, therefore, were neither fully human, nor part of the community.⁹⁰ Even today, many CWDs are kept at home, isolated and, in extreme cases, tied to trees or rocks as a means of controlling them.⁹¹ Thus, children are often confined to the family home until they are too old and troublesome to be controlled by close kin.⁹² Only then will parents seek 'external' assistance and involve primary schools in the upbringing and education of the child.⁹³ It is often difficult for families living in largely agrarian societies to work the fields while keeping an eye on CWDs. Thus, while it was evident from respondents that more children are now being sent to school at an earlier age than before, it was also apparent that too many CWDs are kept at home until they are too big to handle and then sent to school when it is sometimes too late for effective treatment.⁹⁴

The levels of social stigma fuelled by disability are alarming and serve to disadvantage many children who wish to have an education. Under Shona culture, disability is generally thought to be evidence of a curse from God and/or ancestral spirits that wish to inflict pain on disobedient members of the family. Many respondents agreed that disability is often associated with witchcraft, promiscuity by the mother during pregnancy, punishment by ancestral spirits or by God. Thus, people react with fear, anxiety and hostility when they see CWDs. These beliefs lead to isolation, discrimination and prejudice against CWDs. In many contexts, including access to education, it is the beliefs and attitudes which disable the child, not the disability itself.

⁹⁰ V. Kabzems & R. Chimedza 'Development assistance: Disability and education in Southern Africa' (2002) 17 (2) *Disability and society* 147, 150.

⁹¹ This phenomenon has been confirmed by another research project done in Murambinda by Mr E Mandipa and K Katsande under the auspices of the Disability Rights Project.

⁹² See for instance Oxfam 'Breaking down the stigma around children with disabilities', The Zimbabwean, 30 September 2010.

⁹³ In Gokwe, there were reports, during the workshop held on 11 May 2012, of persons with disabilities starting primary school at 16 or 17 years of age.

⁹⁴ This fact was mainly revealed at a meeting with community leaders at Rata Business Centre in Chief Negari's territory.

The problem is largely social and cultural. In the pre-colonial era, children born with disabilities and even twins were taken to a secluded place and left there to die.⁹⁵ Highlighting this problem in an empirical study done for Progressio Zimbabwe, Choruma observed as follows:

*Socially there is still a lot of misunderstanding and lack of knowledge about disabilities. This mainly stems from cultural misgivings about disabilities. Disability is still an issue that is surrounded by myths. In the social setting, people with disabilities are invisible because generally the country's social amenities have not been structured in a way that is inclusive for people with disabilities. As such, people with disabilities are less likely to participate in most social activities. Instead people with disabilities belong to institutions where 'specialised' activities are developed for them. Society's attitude towards people with disabilities reflects a view that people with disabilities are useless liabilities who have no role to play in society.*⁹⁶

Persons with disabilities have always been socially disadvantaged in Zimbabwe and even now many are not accepted into society as they are thought to be incapable of functioning on their own. Disability is equated with inability. These social attitudes often result in CWDs not going to school or not receiving adequate support from parents and the State when in school. For instance, it was apparent from the respondents that many people believe that sending CWDs to school is a 'waste of time' since such children 'are not able to learn'. Apart from fuelling further marginalisation of CWDs, these negative social attitudes can be an 'incentive' for many poor families, reliant on over-stretched budgets, to deny CWDs equal access to education. The child's disability can be a 'strong' cultural reason for the withdrawal of family support for the child's education. More importantly, these attitudes generate a self-fulfilling prophecy as many PWDs are seen to be helpless beneficiaries of charity.

4.3.5 Environmental barriers

⁹⁵ See D Pritchard *Education and the Handicapped* (1963), indicating that this was a worldwide problem.

⁹⁶ T Choruma *The forgotten tribe: Persons with disabilities in Zimbabwe*, Progressio Report (2006) 31.

Many schools are not accommodative to the human rights and educational needs of CWDs. Ordinary schools are often reluctant to enrol CWDs.⁹⁷ Further, the environment in most schools is not as friendly as it should be. Most buildings are inaccessible to children in wheelchairs or on crutches. When CWDs perform at any public function, they have to be lifted on to the stage in their wheelchairs. Children with disabilities are excluded from most inter-school events because of the problems of access, seating or simply an unwillingness to allow them to participate with 'normal' children. Most teachers do not possess the relevant skills and competences to handle learners CWDs and this can be a recipe for further marginalization of CWDs. Some parents, teachers and communities do not appreciate the need to educate CWDs as they consider them incapable of learning.⁹⁸

When CWDs are enrolled in ordinary schools, they are often confronted with an environment that informs them that they are not welcome. Most schools have classrooms, offices and toilets that are stepped and present serious problems to wheelchair users and learners with other physical disabilities. For these children, getting into the classroom or toilet is a nightmare and this induces a feeling that they are burdening other children who help them access these places. To the best of our knowledge, there is no single school in Mwenezi that has tarred roads or pavements. In fact, very few schools have pronounced roads or pathways to even talk about. At many schools, the physical terrain is sloppy or flat and sandy. These circumstances make it difficult for children on wheelchairs or crutches to drive themselves around or move about.

5. Conclusion

Despite the movement towards the greater promotion of the rights of PWDs at the international level, Zimbabwe still does not have a clear disability policy. Whilst the country is striving to mainstream gender equality, there are no indications that the country will mainstream children's rights or disability rights any time soon. Part of the problem may be that the proliferation of disability rights talk comes at a time when the country is facing enormous socio-economic challenges. These challenges push the rights of CWDs to the margins of national economic

⁹⁷ This development has also been confirmed in a series of workshops; including the one held by the Disability Rights Project at Gokwe Business Centre; 11 May 2012.

⁹⁸ See BA Chikwanha 'Preface' in *Breaking down barriers to inclusive education in Zimbabwe* (2011).

planning. In the context of the right to education, it is apparent that a significant number of CWDs do not attend school. Furthermore, the majority of children, especially girls with disabilities, who attend school rarely complete primary education and attain secondary education. At the centre of this trend is a combination of economic, social, cultural, attitudinal and environmental factors which collude to deny CWDs their right to access to education. Thus, behind the denial of the rights of CWDs lie attitudes, cultures and practices which view the life of CWDs as being of less worth, importance and potential than that of able-bodied children. In the end, CWDs continue to be dependent on others and become an economic drain on their communities simply because they were denied the opportunity to attain an education.

This article has demonstrated that the marginalization of CWDs in the context of the right to education is a violation of international and domestic human rights law. The Standard Rules and the CRPD make it clear that States are duty-bound to ensure that buildings, services and resources at educational institutions are tailor-made to accommodate the needs and rights of CWDs. For information to be easily accessible to CWDs, the State also bears the responsibility to provide this information in the format and means which CWDs can understand. These and other noble purposes of international law have been repeatedly violated in Zimbabwe's rural (and even urban) schools. Furthermore, the CRC binds the State to fashion special measures 'designed to ensure that the disabled child has effective access to and receives education, training [and] preparation for employment'. Despite the fact that Zimbabwe is a State Party to the CRPD and the CRC, there are no indications that the country has effectively protected and fulfilled (by taking positive measures) the right of CWDs to education. Even at the local level, the country is violating its own mantra of 'education for all' since CWDs have not had a fair share of attention from government and educational authorities. There is no deliberately framed policy to ensure that CWDs are beneficiaries of affirmative action in the context of educational policies.

Although BEAM has placed some CWDs in school, BEAM is not a disability policy or project. Zimbabwe should rely on section 56 of the Constitution to adopt positive measures to ensure that educational opportunities for CWDs are equalized with those of children without disabilities. To match the standards established at international law, both the Education Act and the Disability Act need complete overhauls. None of these Acts promote legitimate positive discrimination or affirmative action measures. While the Education Act speaks of 'education for all' and every child's right to education, it does not say anything about disability and adds

nothing new for CWDs. Further, the DPA has a number of empowering provisions, but the potential of these provisions is subject to the NDB and the relevant Minister choosing to exercise the discretionary powers conferred on them. The NDB is known for its invisibility and silence and this leaves CWDs with no board to turn to for assistance. It has been observed that disability issues have a low priority within the government of Zimbabwe despite the establishment of the NDB and the appointment of a Presidential Advisor on disability issues.⁹⁹ Thus, the country perhaps needs comprehensive legislation on disability to address the shortcomings evident in the present Acts which were drafted during the heyday of the medical model of disability. There is a greater need to realign the existing legal framework with the new Constitution of 2013 and CRPD. This will invariably foster the prospects for greater protection of the rights of CWDs including the right to education.

Besides the need to have comprehensive disability legislation, there is need for awareness campaigns to challenge prevailing attitudes about disability in Zimbabwe. Such awareness campaigns should not be conducted in a top-down fashion, but should start at the grassroots level. If consistently implemented, these campaigns will go a long way in deconstructing cultural beliefs and social attitudes about disability in Zimbabwe. Finally, there is need to mainstream disability in the same way we have mainstreamed gender in many sectors of society. Mainstreaming disability is another way of politicizing disability rights issues in the same way women's rights issues have been politicized with tangible results.

⁹⁹ Dr R Lang and G Charowa *DFID Scoping Study: Disability issues in Zimbabwe* (2007) 7.

