

THE RIGHT TO EDUCATION OF CHILDREN WITH DISABILITIES IN ETHIOPIA

Submitted in partial fulfillment of the requirements of the degree LLM

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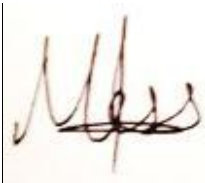
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DECLARATION

I, **Meseret Kifle Ande**, hereby declare that “The right to education of children with disabilities in Ethiopia” is my own work, that it has not been submitted for any degree or examination in any other university, and that all sources I have used or quoted have been indicated and acknowledged by complete references.

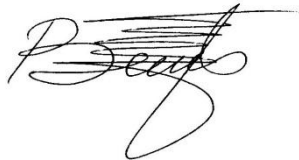
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LIST OF ABBREVIATIONS

ACRWC	African Charter on the Rights and Welfare of the Child
ACPF	African Child Policy Forum
AHC	Ad Hoc Committee
CPRD	Convention on the Rights of Persons with Disabilities
CRC	Convention on the Rights of the Child
CWD	Child with Disability
CWDs	Children with Disabilities
DFID	Department for International Development
DPI	Disabled People's International

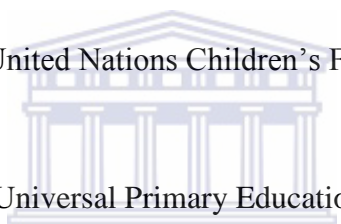
DPOs	Disabled Peoples' Organisations
DRSP	Directive Principles of State Policy
EFA	Education for All
EHRC	Ethiopian Human Rights Commission
EMIS	Education Management Information System
ETP	Education Training Policy
ESDP	Education Sector Development Program
FDRE	Federal Democratic Republic of Ethiopia
GEQIP	General Education Quality Improvements Package
GTP	Growth and Transformation Plan
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICF	International Classification of Functioning, Disability and Health



IDA	International Disability Alliance
MDGs	Millennium Developmental Goals
MOE	Ministry of Education
MOFED	Ministry of Finance and Economic Development
MOLSA	Ministry of Labour and Social Affairs
NGO	Non-governmental Organisation
NGOs	Non-governmental Organisations
NHRIs	National Human Right Institutions
OAU	Organisation of African Unity
OHCHR	Office of the United Nations High Commissioner for Human Rights
PWD	Person with Disability
PWDs	Persons with Disabilities



SNE	Special Needs Education
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNESCO	United Nations Education, Scientific and Cultural Organization
UNICEF	United Nations Children's Fund
UPE	Universal Primary Education
WHO	World Health Organisation



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CHAPTER ONE

INTRODUCTION

1.1 Background to the Study

Education besides being a human right per se is also instrumental in realising other human rights.¹ As Katarina Tomasevski, the former United Nations Special Rapporteur on the Right to Education puts it “the rationale of the right to education is that it functions as a multiplier, enhancing all rights and freedoms when it is guaranteed while jeopardizing them all when it is violated”.² As education is informed by such sound rationales, in many countries governments have assumed the lion share of the responsibility of providing all children with access to education.³

However, in many countries, if not most, CWDs are excluded from education. Needless to say, they face more problems than most children in accessing school and in receiving education that both recognises and meets their needs and that includes them in society on an equal footing, and that provides them equal opportunities.⁴ In a situation where CWDs do not have access to education, it will be difficult, if at all possible, for them to develop their potential. Denial of access to education will have lasting repercussion on the lives of children, as they are most likely to have little employable skills as adults and chances of them leading a life of deprivation are high.⁵

To overcome such adversity, there have been attempts internationally to include CWDs in mainstream schools.⁶ The rights of CWDs to inclusive education was envisaged at the drafting of

¹ Auckland, New Zealand Human Rights Commission *Disabled children's right to education* (2009) 4.

² K Tomasevski 'Human Rights Obligations in Education: The 4A scheme' (2006) 7.

³ Julia Sloth-Nielsen and Benyam D. Mezmur 'Free Education is a Right for Me: A report on Free and Compulsory Primary Education' University of the Western Cape, Save the Children Sweden (2007) 6.

⁴ Right to Education Project 'Promoting Mobilisation and Legal Accountability' (2008).
<http://right-to-education.org/node/638> (accessed October 2012).

⁵ G. Lansdown 'See me, Hear me: A guide to using the UN Convention on the Rights of Persons with Disabilities to promote the rights of children' Save the Children UK (2009) 107.

⁶ For instance in 1990 the World Conference on Education for All (Jomtien, Thailand) issued a Declaration that makes reference to the right to education of children with disabilities; in 1993 the UN General Assembly adopted the UN Standard Rules on

the Convention on the Rights of the Child (CRC)⁷ and reaffirmed through the more recent Convention on the Rights of Persons with Disabilities (CRPD).⁸ Both Conventions clearly uphold the importance of education to all CWDs and maintain that the education system must be inclusive of this group. Ethiopia has ratified the CRC in May 1991⁹ and the CPRD in July 2010,¹⁰ thereby committing itself to protect and promote the rights of all children in Ethiopia.

In Ethiopia, a number of scholars indicate that CWDs have been included in the traditional, verbal, Orthodox priest-taught Ethiopia education system.¹¹ Allegedly the marginalization of CWDs has picked up the pace only in recent years. Modern and written education techniques is said to be the cause to their marginalisation.¹² On the contrary despite lack of quality data, anecdotal evidence suggests that a low percentage of CWDs have had access to any education, traditional or modern.¹³

The type of existing educational service provision in Ethiopia includes special boarding schools,¹⁴ special classes,¹⁵ integrated schools¹⁶ and regular schools.¹⁷ Haile and Bogale¹⁸ cited

Equalisation of Opportunities for Persons with Disabilities; in 1994 the World Conference on Special Needs Education (Salamanca, Spain) endorsed "inclusive education" as the preferred strategy for the education of children with disabilities.

⁷ UN Convention on the Rights of the Child (adopted 20 November 1989) (entered into force September 1990) [Hereinafter referred to as 'the CRC'].

⁸ UN Convention on the Rights of Persons with Disabilities, G.A. Res. 61/106, art 24. cl. 1, U.N. Doc. A/RES/61/106 (Dec. 6, 2006) [Hereinafter referred to as CPRD].

⁹ Convention on the Rights of the Child United Nations Treaty Collection (UNTC) (2013). http://treaties.un.org/pages/viewdetails.aspx?src=treaty&mtdsg_no=iv-11&chapter=4&lang=en (accessed on 22 April 2013).

¹⁰ United Nations Treaty Collection (UNTC) (UN, 2013). http://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-15&chapter=4&lang=en (accessed on 22 April 2013).

¹¹ Tirussew, T 'Overview of the Development of inclusive Education in the Last Fifteen years in Ethiopia'. in Savolainen, H, Matero, m and Kokkala, H (eds), *When All means All: Experiences in Three African Countries with EFA and Children with Disabilities*, Ministry for Foreign Affairs of Finland, Helsinki (2006).

¹² As above.

¹³ The African Child Policy Forum (ACPF) *Children with Disabilities in Ethiopia: The hidden reality* (2011) 5.

¹⁴ Special boarding schools are residential schools where children with the same type of disabilities attend during the day and stay the night together.

¹⁵ Special classes are classes in regular school setting where children with disabilities are placed.

¹⁶ Integrated Schools are schools where children with disabilities are placed fully or partially in regular classes with children without disabilities.

¹⁷ Regular schools are schools where children with undetected disabilities are attending regular classes with others The foundation of such diverse patterns is associated with the origin of special schools and how and by whom they were established Special schools were introduced into the Ethiopian educational landscape by Western missionaries, and used to serve children with disabilities. However, the intake of these schools had been limited and they served limited numbers of children: Tilahun Achaw Messaria 'The Schooling Situation of Hearing Impaired Pupils in Four Regular Schools of Bahirdar and Debretabor Towns' A Thesis submitted to the School of Graduate Studies of Addis Ababa University in partial fulfillment of the requirements for the Degree of Master of Art in Special Needs Education (2002) 11.

<http://etd.aau.edu.et/dspace/bitstream/123456789/.../1/Tilahun%20Achaw.pdf> (accessed on 6 March 2012).

1997 Education Management Information System (EMIS) figures in Ethiopia which revealed that 2,300 CWDs were being educated in seven special boarding schools, eight special day schools and 42 special classes. On the other hand, Ethiopia's ESDPIII which is written almost ten years later specified that there were still 15 special schools but 285 special classes attached to regular government schools.¹⁹ On the integration front, Ethiopia's SNE Program Strategy indicated that there were only five primary schools²⁰ and two secondary schools²¹ 'integrating disabled students'.²² Lewis is skeptic about figures such as these calling them "likely to be misleading" because of the fact that there has not been any comprehensive survey of CWDs in mainstream schools in Ethiopia. The author claims there might be many more CWDs integrated by default.²³ Consequently this has contributed to the alarming early school drop-out rate in the country.²⁴

Ethiopia also faces a situation that is characterized with very few early childhood development programmes. Those that do exist are primarily urban based.²⁵ Only 4 percent of children attended this type of education in the period 2007 to 2010.²⁶ Probably, an even smaller number of CWDs have the opportunity to make use of early childhood education.²⁷ This suggests that the majority of CWDs are not getting the early support they need and are not being detected before they start school. This results in CWDs subsequently dropping out in the first grade when they realise that

¹⁸ Haile, G and Bogale, T. 'From exclusion to inclusion: A case of children with Mental Retardation in Kokebe Tsebah Primary School in Addis Ababa, Ethiopia' (1999).

http://www.eenet.org.uk/theory_practice/exclu_inclu.shtml (accessed on 6 October 2012).

¹⁹ It has been noted that there has recently been a drastic increase in the number of special classes in regular school settings for children with visual and hearing impairments and children with mental disabilities: see MOLSA NPA (2012 – 2021), sec 2.3.4; The Federal Democratic Republic of Ethiopia, Ministry of Education (MOE) *Education Sector Development Program III (ESDP-III) 2005/2006 –2010/2011, Program Action Plan* (2005).

²⁰ One enrolling blind students, and two each enrolling deaf and intellectually impaired students: see Lewis (n 14 above) 12.

²¹ As above; one each enrolling blind and deaf students.

²² As above; these figures are difficult to find in research documents, and indeed are much more difficult for governments or NGOs to gather, than statistics on the numbers of children with disabilities in segregated education.

²³ This assertion is made because of the fact that there has never been a placement service in the Ethiopian school system and a good number of children with disabilities have been integrated into regular schools by default. Children with intellectual disabilities are the least integrated, followed by the visually impaired. Children with hearing impairments appear to have the upper hand in terms of being integrated into mainstream schools, though what happens inside the classroom, including with regard to their access to content, is extremely uncertain: Tirussew, T *Disability in Ethiopia: Issues, Insights and Implications* (2005) 85.

²⁴ However no specific figures are given: Tirussew (2006) (n 11 above) 60.

²⁵ Lewis, I. 'Reaching the Marginalized: Education for Disabled people in Ethiopia and Rwanda' Background paper for the Education for All Global Monitoring Report (2009) 18.

²⁶ UNICEF 'Child Friendly schools: Ethiopia Case Study' (2010) 16.

http://www.unicef.org/education/files/FINAL_Ethiopia_CFS_Case_Study.pdf (accessed on June 2012).

²⁷ Saskia van Veen, Barbara Regeer 'Mainstreaming Disability: Literature study on the laws and policies regarding the rights of persons with disabilities in Ethiopia, India and Kenya' 70.

their school cannot offer quality education that responds to their needs.²⁸ The limited priority given by the government to early childhood education has made it an undervalued area of education.²⁹

On another note, the constitutional obligation of the Government to increase public resources for education has not been translated into practice, leaving a large part of its cost to donors, families and communities.³⁰ Haile and Bogale³¹ observe that the work that is being done to develop the education for CWDs is to a great extent in the form of NGO-funded or pilot programmes.³² More often than not these activities do not continue or improve after the initial support period. Therefore these initiatives are not able to help tackle the educational exclusion faced by CWDs in full scale and sustainable manner.³³

The limited role of NGOs and DPOs in the development of inclusive education for CWDs can in part be attributed to the recently enacted law (called the Ethiopian Charities and Societies Proclamation No. 621/2009). This Proclamation states that if a Civil Society Organisation (CSO) chooses to work on issues concerning rights advocacy, and this clearly includes disability advocacy, it should generate 90 percent of its budgets *only* locally, and not from international funding of any sort.³⁴ In a poor country like Ethiopia where substantial local funding equating foreign donations cannot be raised, such restriction has significant consequences, among other rights, on the enjoyment of educational rights by CWDs.³⁵

Measuring progress made towards inclusive education of CWDs in Ethiopia or assessing the success of national responses to this effect warrants knowledge of the magnitude of childhood

²⁸ As above, 14

²⁹ As above.

³⁰ K Tomasevski 'The State of the Right to Education Worldwide: Free or Fee – 2006 Global Report' (2006) <http://www.tomasevski.net/documents/2006GlobalReport.pdf> (accessed on 9 March 2012).

³¹ Haile and Bogale (n 18 above).

³² Currently there are over 30 organizations promoting inclusive education supporting students with disabilities to study in ordinary schools. UNESCO, for example, runs 50 so called 'Child-Friendly Schools'. These rights-based schools aim to be protective, inclusive and healthy for all children, included those with disabilities. Further, representatives from DPOs are involved in the follow-up of the national implementation of special needs education: MOLSA NPA (2012-2021) section 2.3.4 69.

³³ Lewis (n 25 above) 18.

³⁴ The Federal Democratic Republic of Ethiopia (FDRE) *Charities and Societies: Proclamation No.621/2009* art 2 section 3.

³⁵ Note that for registration purpose art. 57 (6) of the CSOs Proclamation sets a requirement that 'where the Society has Federal character and nomenclature, its work place and composition of the members shall show the representation of at least five Regional States'. Without having the necessary funding, it is obvious that it would be difficult to be represented in five regions and perform effectively. With this requirement the law provides for a double encroachment on enjoyment of socio-economic rights by CWDs.

disability in the country. The 1994 Population and Housing Census in Ethiopia estimated that there were 175,000 children below 15 years who had some form of disability.³⁶ The 2007 census also shows that there are 231,192 CWDs in the country. However, these figures are by far dwarfed by estimates in the National Plan of Action for Equality of Opportunity and Full Participation of Persons with Disabilities (2010-2015) that claims the prevalence of about 2.5 million CWDs in Ethiopia.

The latter estimate is in line with the World Health Organization (WHO) benchmark of 7-10 percent disability incidence in the general population in developing countries.³⁷ According to this estimate, there are over 2.5 million primary-school-age CWDs in Ethiopia. Of these, about 33,300 children, or only 1.3 per cent, have been reported by the Ministry of Education to have access to primary education.³⁸ The massive discrepancy in the reported numbers of CWDs in the country has made many experts in the field to caution against over reliance on existing statistics.³⁹ Irrespective of the incongruent estimates, the fact remains that a majority of CWDs do not have access to education in Ethiopia.

1.2 Research Question

This study therefore seeks to assess the extent to which national laws ensure that CWDs are accessing the right to education on an equal basis with non-disabled children. The study also seeks to assess the policy, legislative and administrative gaps surrounding the exercise of this right. The study process involved review of the policy and legal framework on education for CWDs vis-à-vis international human rights standards and norms. To this end, this study attempts to raise and discuss the following research questions:-

- What are the international standards on the right to education of CWDs?
- To what extent is the Government of Ethiopia's laws and policies on education for CWDs conform to these international human rights standards?

³⁶ UNICEF (2010) (n 26 above) 16.

³⁷ World Health Organisation (WHO) & World Bank *World Report on Disability* (2011).

³⁸ The Federal Democratic Republic of Ethiopia, Ministry of Education *Development of education of inclusive education*. National Report of the Federal Democratic Republic of Ethiopia. *Addis Ababa* (2008).

³⁹ Lewis (n 25 above).

To assess the extent to which national laws on education for CWDs comply with international human rights standards and norms, the research will address other related sub-questions such as:-

- Are there detailed and sufficient laws that facilitate the effective exercise of the right to education of CWDs?
- What are the challenges as well as the opportunities in upholding the education rights of CWDs in Ethiopia?

1.3 Significance of the Study

This paper is of particular importance as it seeks to explore and understand one of the neglected, yet enormous, challenges in Ethiopia – the realisation of the right to education of CWDs. The paper aims to identify the gaps in relation to domestic policy and legislative frameworks, and if there are any, make recommendations with a view to ensure adequate, focused and effective legislative frameworks to meet State’s obligations to guarantee the right to education generally and inclusive education specifically. It could serve as the basis to draw important lessons not only for Ethiopia but also for other African countries with similar situations, and also inspire discussion for further research in this area.

The value added of the study will also be its up-to-date nature in that it will take into account recent developments relevant to the field. The study is not of academic interest alone as the subject under consideration is of particular pertinence to the current situation of CWDs in Ethiopia, where the right to education of at least 1.5million CWDs who are out of school is at stake.⁴⁰

1.4 Literature Review

The author has referred to various sources relevant to the right to education and the rights of PWDs and CWDs. A recent study by the African Child Policy Forum (ACPF) is of a particular importance to the study at hand. The report reviews existing Ethiopian legislative and policy framework pertaining to the right to education of CWDs and later establishes that the existing

⁴⁰ Federal Republic of Ethiopia, Ministry of Education (MOE) *Special Needs Education Program Strategy: Emphasizing Inclusive Education to Meet the UPE and EFA Goals*, Addis Ababa (2006) 6.

system has been developed in relation to non-disabled children; thus, cannot adequately address the individualized and unique needs of CWDs.⁴¹

Another ACPF report analyzes how cultural, social, physical and other societal barriers prevent CWDs in Ethiopia from enjoying their constitutional rights to equality, freedom and human dignity. It establishes opportunities and practices that could be used to address these barriers to enhance CWDs participation in Ethiopian society.⁴² Unlike the above-mentioned ACPF studies, this study uses a critical approach in the course of reviewing the relevant normative frameworks surrounding the right to education of CWDs and assess the policy, legislative and administrative gaps surrounding the exercise this right in Ethiopia. .

Lewis' paper, which examines the magnitude and causes of exclusion of PWDs from education in Ethiopia and Rwanda, is worth mentioning here. The review of policy shows that Ethiopia "is moving forward with a mixture of segregated and inclusive education" for CWDs.⁴³

Similar to this, World Vision produced a report entitled "*Education's Missing Millions*" in 2007. The report examines education sector plans' of several countries, including Ethiopia's. The report found that policies and provision for CWDs in Ethiopia are neither implemented nor comprehensive enough.⁴⁴

Combrinck, in her study, discusses the right to education of CWDs.⁴⁵ Though her work deals with the right to formal education in the African context and no mention is made regarding the right education of children with in Ethiopia, it was possible to relate by way of illustration.⁴⁶

⁴¹ The African Child Policy Forum (ACPF) *Educating Children with Disabilities: Ethiopia* (2011).

⁴² The African Child Policy Forum (ACPF) *Children with Disabilities in Ethiopia: The hidden reality* (2011).

⁴³ Lewis (n 25 above).

⁴⁴ World Vision UK *Education's missing millions: Including disabled children in education through EFA FTI processes and national sector plans* (2007).

http://www.worldvision.org.uk/upload/pdf/Education%27s_Missing_Millions_-_Main_Report.pdf (accessed on 22 October 2012).

⁴⁵ H Combrinck 'The hidden ones: Children with disabilities in Africa and the right to education' in Julia Sloth-Nielsen (ed) *Children's rights in Africa* (2008).

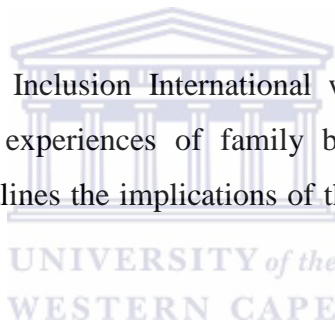
⁴⁶ The study mentions South Africa, Kenya and Uganda as examples: see Combrinck 314.

Kilkelly further examines the norms of the CRC including the provision on education and indicates their application for CWDs⁴⁷ while the UN Special Rapporteur on the Right to Education's 2007 report lays out the obligations on States Parties that have ratified the CPRD to "ensure an inclusive education system".⁴⁸

Akinbola examines the right to inclusive education in Nigeria⁴⁹ while Kanga in his journal article discusses the right to primary education. The discussion specifically relates to Cameroon and does not analyse the right from the perspective of disability.⁵⁰

Wakefield and Murungi have discussed the content of international law on the right to education of CWDs.⁵¹ The article uses Kenya and South Africa as case studies and only focuses on the right to education of children with intellectual disabilities.

There are also global reports by Inclusion International which document information from parents and self advocates, and experiences of family based organizations with inclusive education.⁵² One of the studies outlines the implications of the various articles of the CPRD for Education for All.⁵³



1.5 Research Methodology

This study will be descriptive and analytical based on secondary sources such as conventions, treaties, books, the Internet, journals, and articles. Owing to limited time and with the intention to sharpen the focus of this thesis on the legal international, regional and national obligations of

⁴⁷ U Kilkelly '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) 191.

⁴⁸ United Nations Human Rights Council 'The Right to Education of persons with disabilities: Report by the UN Special Rapporteur on the Right to Education Vernor Muñoz' A/HRC/4/29 (2007).
<http://daccess-ddsny.un.org/doc/UNDOC/GEN/G07/108/92/PDF/G0710892.pdf?> (accessed 17 June 2012).

⁴⁹ BR Akinbola "The right to inclusive education in Nigeria: Meeting the needs and challenges of children with disabilities" (2010) 10 *African Human Rights Law Journal* 457.

⁵⁰ SA Kanga "Realising the right to primary education in Cameroon" (2011) 11 *African Human Rights Law Journal* 171.

⁵¹ Lorenzo Wakefield & Nkatha L. Murungi 'Domesticating international standards of education for children with intellectual disabilities: a case study of Kenya and South Africa' in Grobbelaar-du Plessis & Tobias van Reenen (eds) *Aspects of Disability Law in Africa* (2011).

⁵² Inclusion International *Better Education for All: When We're Included Too* (2009); *Hear our Voices: A global report, People with intellectual disability and their families speak out on poverty and exclusion* (2006).
<http://ii.inclusioneducativa.org> (accessed on 21 February 2012).

⁵³ Inclusion International *The Implications of the Convention on the Rights of the Child (CRPD) for Education for All* (2009)
<http://ii.inclusioneducativa.org> (accessed on 21 February 2012).

Ethiopia with respect to the education of CWDs, this research only concentrates on instruments that have a binding effect. Because this research was undertaken outside of Ethiopia, it was neither possible nor intended to make use of primary sources.

1.6 Scope of the Study

The scope of the study is limited to investigating the issue of the right to education of CWDs at the primary level, particularly the issue of inclusive education. As a result, other issues pertaining to the rights of CWDs will not form a main or independent concern of the paper. The scope of the study is also limited geographically- as it will focus on Ethiopia. However, where relevant and available, experiences from elsewhere (especially other African countries) will be used to substantiate arguments and clarify points.

1.7 Description of 'Disability'

Broadly speaking, what disability is and who may or may not be considered as a PWD are disputed matters. This is so may be because, unlike other social distinctions (such as gender, age or colour), disability has no singularly overarching feature which is obvious in all people who either are placed or claim to belong to such group.⁵⁴ Disability is harder to define than other social distinctions mentioned above as it covers such a broad range of conditions and also since the line between ability and disability is blurred. Combrinck points out that the legal definitions of disability may also differ in relation to different legal purposes. For example, a social welfare law offering the advantages of personal assistance may have a different target group to a discrimination law and accordingly, a different definition of disability.⁵⁵

The grassroots network Disabled Peoples International (DPI) differentiates between functional impairment and disability.⁵⁶ The Department for International Development also uses this definition, but adds an economic perspective stating that a disability will reduce economic participation in the community.⁵⁷

⁵⁴ Kenya National Commission on Human Rights (KNCHR) 'Objects of pity or individuals with rights: The right to education for children with disabilities' Occasional Report (2007) 7.

⁵⁵ Combrinck (n 45 above) 303.

⁵⁶ KNCHR (n 54 above) 7.

⁵⁷ Mathias Omar 'Constitutional Protection of the Right to Education in Tanzania and South Africa: A Comparative Study' unpublished LLM thesis, *University of Pretoria* (2008) 10.

The WHO emphasizes that many people will most likely face some level of disability at some point in their lives. Under International Classification of Functioning, Disability and Health (ICF),⁵⁸ disability is regarded as the result of the interaction between impairments and negative environmental factors.⁵⁹ The ICF evaluates “functioning on a scale from no impairment to complete impairment.” It also sets all health conditions on equal footing by shifting the focus from cause to impact.⁶⁰

The most recent international description of disability is found in the CRPD according to which PWDs include those

“who have long term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others”⁶¹

Despite contention surrounding the issue, this definition will be adopted for the purposes of this study.⁶²

1.8 Disability Terminology

The terms we use to describe CWDs have significant effect on their right to access education as language is powerful and the choice of words used to describe these children can either perpetuate social exclusion or promote inclusion.⁶³

By taking into account of the importance of terminology, the term ‘Children with Disabilities’ is used in this study as a replacement for ‘Disabled Children’ to stress the individuality of children rather than their condition.

⁵⁸ The standard which the WHO re-launched in 2001 is now called the International Classification of Functioning, Disability and Health (ICF). If fully and meaningfully implemented by all nations, ICF is believed to help produce consistent and internationally comparable disability data.

⁵⁹ For more on the International Classification; see <http://www.who.int/icidh> (accessed on 6 March 2012).

⁶⁰ United Nations Children’s Fund (UNICEF) Innocenti Research Centre ‘Promoting the Rights of Children with Disabilities’ Innocent Digest 13 (2007).
<http://www.unicef-irc.org/publications/pdf/digest13-disability.pdf> (accessed on 6 March 2012).

⁶¹ The African Child Policy Forum (ACPF) *Missing Voices: Children with Disabilities in Africa: Addis Ababa: The African Child Policy Forum* (2009) 13-14.

⁶² Combrinck (n 45 above) 303.

⁶³ UNICEF(2007) (n 60 above) 2.

‘Disability’ is used to describe the condition under the terms of which physical and/or social barriers prevent a PWD from having equal chances to participate in normal life.⁶⁴

‘Inclusive Education’ is conceptualised as a process of responding to the diversity of needs of learners through increasing participation in learning, cultures and communities, and reducing exclusion in education.⁶⁵ It aims at addressing the learning needs of all persons, especially those that are vulnerable to marginalisation and exclusion, by ensuring that schools accommodate all children in spite of their differences and impairments.⁶⁶

Inclusive education differs from the notion of ‘Integration’, which tends to focus more on ensuring disabled children attend mainstream schools rather than on ensuring that these children are learning.⁶⁷

The ‘Special Education’ approach considers that CWDs are different from other children; they do not respond to learning; they have special needs; and ultimately, they have to be segregated from mainstream schools.⁶⁸ Consequently, CWDs are placed in their own schools.⁶⁹

For the purposes of this paper, the term ‘Mainstreaming’ is often used to mean the same as inclusion or integration.⁷⁰

The term ‘Free Primary Education’ entails primary education that is available without charge to the child, the parent or the guardian.⁷¹ This requires the elimination of any fees and direct costs of education,⁷² including compulsory levies and other indirect costs such the obligation to wear a school uniform that is relatively expensive.⁷³

⁶⁴ As above.

⁶⁵ R Rieser *Implementing inclusive education* (2008) 21.

⁶⁶ Reiser (As above).

⁶⁷ Stubbs, S. *Inclusive Education; where there are few resources* (2008) 43.

⁶⁸ Rieser 27.

⁶⁹ Muñoz (n 48 above) para 11.

⁷⁰ Stubbs, S. *Inclusive Education: where there are few resources* (2002) 25.

⁷¹ Committee on Economic, Social and Cultural Rights (ESCR) General Comment No 11 (1999) „Plans of action for primary education (UN Doc E/C.12/1999/4) para 7.

⁷² General Comment No 11, para 7.

⁷³ General Comment No 11, para 7.

For the purposes of this paper, the term ‘Education of Children with Disabilities’ is used to refer to issue of the education rights of CWDs at the primary level, particularly the issue of inclusive education.

1.9 Outline of Chapters

Chapter One will introduce the work, and hence will address issues pertaining to the background to the study, the research methodology, significance of the study, and other related background information that will provide general guidance on the research to be undertaken.

Chapter Two establishes the conceptual as well as legal basis of the right to education for CWDs both from international and regional perspectives. It builds a picture of the human rights principles, which later parts use to adjudge the extent to which CWDs exercise their right to education in Ethiopia. In so doing the main instruments that will receive attention are the African Charter on the Rights and Welfare of the Child (ACRWC)⁷⁴, the CRC and the CRPD.

Chapter Three will focus on the legislative and policy framework relevant for the education of CWDs in Ethiopia.

Chapter Four, which is the crux of the research, will critically analyze the extent to which the Government of Ethiopia is complying with its international and regional, as well as national obligations pertaining to the education of CWDs.

The final Chapter will proffer a conclusion and some recommendations based on the discussions in the preceding Chapters.

⁷⁴ African Charter on the Rights and Welfare of the Child, (adopted 1990), (entered into force 29 October 1999) [Hereinafter referred to as ‘the ACRWC’].

CHAPTER TWO

CONCEPTUAL ISSUE, INTERNATIONAL AND REGIONAL LEGAL FRAMEWORKS OF THE RIGHT TO EDUCATION OF CHILDREN WITH DISABILITIES

2.1 Introduction

The right to education is universal and extends to all children, including CWDs.⁷⁵ This right is incorporated in various international instruments. In addition it is guaranteed in Article 26 of the Universal Declaration of Human Rights (UDHR). It is also dealt with in Article 13 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) and various regional instruments.

In particular, the right to education of CWDs, which is the concern of this thesis, is provided for by a number of standard-setting instruments elaborated by the United Nations Educational, Scientific and Cultural Organization (UNESCO) as well as by normative frameworks at regional level.⁷⁶ The right to education of CWDs is also recognised by governments as crucial to secure development and social transformation.⁷⁷ This recognition is embodied in the international goals, strategies and targets that have been set during the past 20 years.⁷⁸

The purpose of this chapter is to introduce the relevant normative framework of inclusive education and, thus, explore the content of the right to education of CWDs; it is by no means exhaustive. Instead, this chapter concentrates on instruments that have particular focus either on children's rights or disability rights i.e. the CRC, CRPD and the ACRWC.

⁷⁵ Janyne Pivik, Joan McComas, Marc Laflamme 'Barriers and Facilitators to Inclusive Education' Vol, 69, No.1. University of Ottawa, Canada (2002) 97-17.

⁷⁶ United Nations Educational, Scientific and Cultural Organisation (UNESCO) *Round Table on Constitutional Legal Based of the Right to Education as a Fundamental Human Right* (2002).

http://portal.unesco.org/education/es/file_download.php/2cd8c40932f7ffc06dd39af600732a4dddiscussion.right+to+edu..pdf (accessed on 6 March 2012).

⁷⁷ As Above.

⁷⁸ United Nations Educational, Scientific and Cultural Organisation (UNESCO) *A Human Rights-Based Approach to Education for All: A framework for the realisation of children's right to education and rights within education* (Joint Publication UNESCO-UNICEF) (2007) 1.

The chapter begins by discussing the conceptual framework surrounding the topic at hand. Accordingly the next section presents the philosophical frameworks which have informed the marginalisation of PWDs; but at the same time which have also been the drivers for voicing and raising the visibility of PWDs as subjects rather than objects of human rights.

2.2 Models of Disability

The different models of disability are the various ways in which disability is perceived, and consequently, PWDs are treated in society. They encompass all areas of life, and shape the attitudes and beliefs of the society. Ultimately, these views are incorporated in the programmes and policies that a government develops, which determine the division of roles and responsibilities of all.⁷⁹ Prominent frameworks to disability include the charity model, medical model, the social model and the human-rights based model.⁸⁰ Different eras in world disability movement have witnessed ebbs and flows in the prominence of one model over the other.⁸¹

2.2.1 The Charity or Welfare Model

The initial philosophy, which informed the discourse and practice in relation to disability, was founded on two inter-linked paradigms: the “charity” and “medical” models of disability.⁸² The “charity” model of disability perceives PWDs as helpless individuals who require care and protection. This model calls upon the good-will of society to pity and, therefore, support persons with disabilities. It was driven by a sense of compassion and benevolence as opposed to notions of justice and equality.⁸³

Despite often being construed as compassionate, the charity model tacitly denies PWDs equality in society.⁸⁴ This model sees the *individual* as the cause of the “problem.” The view here is that since PWDs cannot take care of themselves, the society will provide for their needs through charity or benevolent caretaking, instead of “fixing” them.⁸⁵ PWDs are, in turn, viewed as “recipients” of the good will of the society, and not as rights-holders. According to this model,

⁷⁹ Landmine Survivors Network ‘A human Rights-Based Approach to Disability: The Legal Framework for Survivor Assistance in 24 States Parties’ (2007) 5.

<http://www.landminesurvivors.org> (accessed on 6 October 2012).

⁸⁰ Ethiopian National Disability Action Network (ENDAN) ‘A study on Opportunities and Services for Persons with Disabilities in Addis Ababa’ (2010) 3.

⁸¹ As above.

⁸² KNCHR (n 54 above) 9.

⁸³ As above.

⁸⁴ (n 45 above).

⁸⁵ As above.

the *quality* of the “care” that is being provided is rarely cause for consternation. The end result is the creation of a “separate track” system for PWDs which perpetuates their discrimination and exclusion.⁸⁶

2.2.2 The Medical Model

Related to the charity model, is the “medical” model of disability that assumed that medical interventions could bring PWDs to a state of “normalcy” similar with non-disabled people. This model sought to understand the biological origin of the disabling condition so as to correct it or prevent it. It applied interventions based on assessment, diagnosis and labeling.⁸⁷ The overall belief is that a human being is flexible and alterable whilst society is fixed and unalterable thereby assuming that it is the responsibility of a person with a disability to adapt to a hostile environment.⁸⁸

The medical model, same as the charity model, results in creation of a parallel system and provision of services in segregated settings, which are often stigmatised by the community. This model only furthers exclusion of PWDs from society.⁸⁹ In the context of education, legislating from a medical model often provides for special school for CWDs.⁹⁰ This is based on the belief that the needs of PWDs are better accommodated in separate facilities that can be arranged to meet very specialised needs rather than making mainstream institutions accessible. Thus the exclusion of PWDs is not seen as discriminatory, rather as an inevitable outcome of their medical limitations. It is also considered just since these persons are assumed incapable of coping with society at large and all or most of major life’s activities. One of the consequences of the medical model was that PWDs were seen not as subjects of legal rights but as objects of welfare, health and charity programmes.⁹¹ Strangely enough, a number of international human rights

⁸⁶ As above.

⁸⁷ KNCHR (n 54 above) 9.

⁸⁸ Rieser, R., and Mason, M. *Disability Equality in the Classroom: A Human Rights Issue*. London: Disability Equality in Education (1992).

⁸⁹ Landmine Survivors Network (n 79 above) 5.

⁹⁰ Special schools for children with disabilities have been the subject of considerable debate in that they may promote the view that children with disabilities must be given preferential treatment, because they are “less competent” than their peers without disabilities.

⁹¹ Combrinck (n 45 above) 301.

declarations arose from this premise, and thus emphasise prevention of disability and rehabilitation of PWDs.⁹²

2.2.3 The Social Model

The social model of disability, unlike the medical and charity models, emphasises on the inclusion and participation of PWDs in society.⁹³ This view does not seek to “fix” the individual, but to fix the society. It is the society as a whole that is responsible for creating barriers to the full participation of PWDs, and it is the society as a whole that has the responsibility to remove the barriers. The model advocates that PWDs are viewed as equal members of society with valuable contributions. It is not their individual characteristics that constrain their full participation, but the barriers created by societies because of misperceptions about PWDs.⁹⁴

With regard to the education of CWDs, the social approach criticises special education and argues that inclusive education should be a medium by which personal and social relationships as well as positive attitudes towards disability are formed. Proponents of this model believe that excluding people who have impairments is diminishing to both disabled and able-bodied people alike.⁹⁵ Consequently, the social model stresses the need to make considerable adjustments to the physical and social environment to eliminate the obstacles to equal participation of CWDs in schools which entails the need to make the school setting accessible to all CWDs by removing all barriers.

2.2.4 Human Rights-Based Model

The human rights-based model has at its core the principles of human rights, as embodied in the UDHR and other international human rights documents.⁹⁶ This model compliments the social based model of disability and emphasises that the problem of disability arises from a lack of adjustment by the state and civil society to address socially created barriers to facilitate respect for the dignity and equal rights of all persons.⁹⁷ The human rights-based model considers the

⁹² An example of this is the 1950 resolution of the Economic and Social Council on Social Rehabilitation of the Physically Handicapped.

⁹³ Kilkelly (n 47 above) 3.

⁹⁴ Combrinck (n 45 above).

⁹⁵ Rieser, R., and Mason, M. *Disability Equality in the Classroom: A Human Rights Issue*. London: Disability Equality in Education (1992).

⁹⁶ Landmine Survivors Network (n 79 above).

⁹⁷ Combrinck (n 45 above).

social and physical barriers that PWDs face as violations of their basic human rights. The aim of this model is therefore to create societies that are fully inclusive, respect the dignity and equality of all human beings regardless of difference.⁹⁸

In respect of the education of CWDs, the human rights-based model requires the state to ensure that CWDs are able to access education on an equal foot with other children. Moreover, since the human rights-based model emphasises equalisation of opportunities of CWDs in the enjoyment of all rights, it will certainly require the state to promote inclusive education so that CWDs are not excluded from the mainstream education system.

In light of the four models of disability, it can be observed that the social and human rights-based models are widely regarded superior to medical and of course charity models because they are more likely to ensure the enjoyment of the right to education of CWDs as they expect the state to take measures to foster the inclusion of PWDs in society and ensure that they enjoy human rights on an equal basis with others.⁹⁹

The following sections analyse the international and regional standards on the right to education of CWDs in light of the current conception of disability i.e. the social model and the human rights-based model of disability.

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

The CRC is the first binding global human rights instrument to deal with children's human rights in a comprehensive manner. It includes detailed provisions protecting the rights of children in all spheres of their lives.¹⁰⁰ The CRC has been acknowledged as significant because of the manner in which civil and political rights are interwoven with social, cultural, economic and humanitarian rights in a single document.¹⁰¹ The CRC has also been praised as a foundation

⁹⁸ As above.

⁹⁹ M Schulze *Understanding the UN Convention on the Rights of Persons with Disabilities* (2010) 16.

¹⁰⁰ Kilkelly (n 47 above) 191.

¹⁰¹ Sloth-Nielsen J, Ratification of the Convention on the Rights of the Child: Some implications for South Africa, *South African Journal on Human Rights*, Volume 11 (1995) 404; D. Fottrell 'One step forward or two steps sideways? Assessing the first decade of the United Nations Convention on the Rights of the Child', in D. Fottrell (ed.), *Revisiting children's rights: 10 years of the UN Convention on the Rights of the Child* (2000) 4; M. Rishmawi 'A Commentary on the United Nations Convention on the Rights of the Child: Article 4: The Nature of States Parties' Obligations (2006) paras. 6 and 40-43, 3 and 16-17.

stone in children's rights as it binds States that have ratified it to give priority to realising the rights of children generally.¹⁰²

The CRC is particularly significant for the addition of a provision entirely dedicated to the rights of CWDs.¹⁰³ Article 2 of the CRC is also notable as it prohibits any discrimination in respect of the enjoyment of the rights recognised under the Convention on the ground of disability¹⁰⁴ which makes the CRC the first binding instrument in international law to do so.¹⁰⁵ According to Hodgkin and Newell, the inclusion in the CRC of a specific Article on the rights of CWDs and the inclusion of disability as a specific ground for protection against discrimination reflect growing consideration and acknowledgment of the human rights of CWDs.¹⁰⁶ In this context, the CRC represents a major step forward.¹⁰⁷ The CRC is therefore a fundamental source of rights for CWDs.

The next section will discuss two provisions; Article 23 and Article 2 of the CRC in detail as they are highly relevant to the education of CWDs.

2.3.1 Article 2: Non Discrimination

Article 2 of the CRC prohibits discrimination regarding the enjoyment of the rights recognised under the Convention on any ground including disability. This provision is indispensable as it enhances the right of CWDs to enjoy the benefits of the Convention equally with other children.¹⁰⁸

The CRC Committee while making an observation on discrimination in the context of education noted that discrimination on the basis of any grounds listed in Article 2 of the CRC, where its

¹⁰² De Blanc V, *Implementation of 1989 Convention on the Rights of the Child and the Work of the United Nations High Commissioner*, in Ghent Papers on Children's Rights, University of Ghent (Belgium) (1996) 403.

¹⁰³ CRC, art. 23.

¹⁰⁴ Kilkelly (n 47 above) 191.

¹⁰⁵ UN Committee on the Rights of the Child, 'General Comment no. 9 (2006): The rights of children with disabilities' February 27, 2007, CRC/C/GC/9 para 2.

¹⁰⁶ Rachel Hodgkin and Peter Newell *Implementation Handbook for the UN Convention on the Rights of the Child* (2002) 320.

¹⁰⁷ The CRC besides placing the issue of both children and disability in the agenda of international human rights law for the first time, it does so in the context of both civil and political rights, and economic, social and cultural rights.; G. Lansdown (n 5 above) 15.

¹⁰⁸ CRC/C/SR.418 (summary record of meeting held on 6 October 1997), para. 4.

direct or indirect¹⁰⁹ disregards the human dignity of the child and is able to undermine or even destroy the child's capacity to benefit from educational opportunities.¹¹⁰ Thus the principle of non discrimination should be understood in the sense that CWDs may not be limited to receive identical treatment with other children in all cases, but they may also get treatment required by their disability whenever needed.¹¹¹

Accordingly, States need to review any existing legislation to ensure that no direct or indirect discriminations in the law prevent CWDs from exercising their right to education. Legislative measures should also include ensuring the right to education of CWDs on an equal basis with other children. To that end, State should abolish laws that label children as 'educable' and 'non educable' and make sure that CWDs have access to the same curriculum and opportunities to enter public examinations.¹¹²

2.3.2 Article 23: Children with Disabilities

The CRC includes a separate provision on CWDs under Article 23.¹¹³ It is, as such, a rare provision among human rights treaties. But this must be construed in the light of Article 2 which states that all rights shall apply to all children without discrimination. In other words, Article 23 supports Article 2 -it does not replace it - and was included in recognition of the fact that CWDs are often excluded.¹¹⁴

¹⁰⁹ As to the question of 'what constitutes discrimination?' both legislation and legal theory operate with cognizance of the two notions of the term: direct and indirect discrimination. Discrimination that is associated with explicit differential treatment is referred to as direct discrimination. Indirect discrimination is more subtle, but equally damaging. It can result from an absence of law or policy and often occurs when 'equal rights' are misunderstood to mean 'equal treatment.' See Jones, Hazel 'Disabled Children's Rights and the UN Convention on the Rights of the Child' *Disability studies Quarterly*, vol. 20 no. 4, Fall (2000); Aslak Syse 'Equality and Accessibility: A proactive approach to strengthen the legal status and protection against discrimination of persons with disabilities' Stockholm Institute for Scandinavian Law (1957-2010) 371.

<http://www.scandinavianlaw.se/pdf/49-22.pdf> (accessed on 9 March 2012).

¹¹⁰ All such discriminatory practices contradict with the requirements in article 29 (1) (a) that education be directed to the development of the child's personality, talents and mental and physical abilities to their fullest potential: see Committee on the Rights of the Child, 'General Comment No. 1: The aims of education, article 29 (1) (2001)' CRC/GC/2001/1 (2001) para 10 and 11.

¹¹¹ A.G. Mower, *The Convention on the Rights of the Child: International Law Support for Children* (1997) 25.

¹¹² UNESCO (2007) (n 78 above) 53.

¹¹³ The CRC Committee's General Comment No 9 identifies paragraph 1 of Article 23 as the "leading principle" governing the implementation of the CRC with respect to children with disabilities. According to the Committee, the "core message" of this paragraph is that children with disabilities should be included in society. Consequently, all measures taken to implement the rights of children with disabilities, including in the area of education, should be guided by the principles set out in Article 23(1) and should "aim at the maximum inclusion of those children in society." CRC Committee General Comment No. 9 (2006) para 11.

¹¹⁴ Centre for Studies on Inclusive 'Education Inclusive Education a Framework for Change: national and international perspectives' (1997) 6.

<http://disability-studies.leeds.ac.uk/files/library/CSIE-inclusive-ed.pdf> (accessed on 30 November 2012).

Scholars have been highly critical of Article 23.¹¹⁵ Kilkelly for instance argues that a lower standard is given to CWDs under the CRC.¹¹⁶ While explaining the rationale behind this assertion, the writer points out that under Article 23 (2), even though States Parties are under obligation to recognise the right of CWDs, no mention is made of how this right is to be secured.¹¹⁷ However, Article 4 of the CRC sets for basic obligations of States Parties under the entire Convention, which includes the rights of CWDs under Article 23. Lack of any reservation to Article 23 also indicates the commitment States Parties assumed for the realisation of the right to education of CWDs, not affording them lower standards.

Kilkelly further reveals another limitation in which CWDs have no absolute right to assistance and that access to services is not set out as a matter of right or as a general entitlement based on need in Article 23.¹¹⁸ This is evident in Article 23(2) where the extension to CWDs of assistance is made "subject to available resources". Furthermore sub-article 3 repeats the resource qualification by stipulating that assistance extended under Article (2) shall be provided free of charge¹¹⁹ "wherever possible" and "taking into account the financial resources of the parents or others caring for the child"...¹²⁰ Thus the article is riddled with qualifications and limitations with regard to resources.

What is more, Article 23 emphasises that, in order to realise the principle of non-discrimination, CWDs have the right to have their individual needs met. The Article implies that CWDs may

¹¹⁵ Combrinck (n 45 above) 307.

¹¹⁶ Kilkelly (n 47 above) 193.

¹¹⁷ For this reason, Kilkelly claims that the article contrasts with other CRC provisions such as article 19 on protection from abuse and Article 22 on refugee children, which require States parties to take all appropriate measures to ensure that children receive the care and protection they need.

¹¹⁸ In paragraph 2, States parties are required to ensure assistance to children with disabilities who are eligible and who apply for such services and to encourage the provision of such assistance subject to the conditions set forth in the paragraph.

¹¹⁹ It is noteworthy that the drafters had their differences on particular provisions of the article. Some suggested that since care of CWDs is the governments' responsibility, it should be provided free of charge. Others believed that care for CWDs is primarily the responsibility of parents and close relatives so only certain services should be required from the state and private organisations. A third group, while acknowledging the states' substantial responsibility, argued that the CRC should recognise that the needs of poor countries in providing assistance to CWDs and should mandate some forms of assistance for these children. Article 23 in its current form seems to have found the middle ground for these conflicting points of view: Trynie Boezaart, Ann Skelton 'From Pillar to Post: legal solutions for children with debilitating conduct disorder' in Grobbelaar-du Plessis & Tobias van Reenen (eds) *Aspects of Disability Law in Africa* (2011) 114.

¹²⁰ The African Child Policy Forum (ACPF) *The lives of children with disabilities in Africa: A glimpse into a hidden world* Addis Ababa: The African Child Policy Forum (2011) 6.

need ‘special care’. The failure to mention the barriers that children face in society suggests that the only problems facing CWDs are to do with their own impairments. Unfortunately, Article 23 can easily be misread. It could validate the segregation of CWDs because they are seen as needing ‘special care’. It also gives the impression that CWDs can only have access to their rights ‘where resources allow’, since ‘special care’ is usually costly.¹²¹

For the reasons highlighted above, Combrink is of the opinion that the other provisions of the CRC “hold out more promise of vindication of the rights of CWDs.” She maintains that Article 2 is specifically important, since its explicit prohibition of discrimination on the ground of disability means that the ‘general rights’ in the CRC apply equally to CWDs.¹²²

Beside the above discussed provisions, which directly refer to disability, the CRC is of fundamental importance in ascertaining the status of the rights to education for CWDs. It has several provisions regarding the right to education, emphasising that all children are entitled to the right to education. These provisions will be discussed in detail below.

2.3.3 The Right to Education on the “basis of equal opportunities”

Because education can serve two mutually conflicting purposes; to systematically discriminate against certain vulnerable groups and retain inequality or as a means to eliminate inequality, the drafters of the CRC came to a decision to put considerable weight on equality in education by reinforcing the general non-discrimination principle of Article 2(1) of the CRC in the *Chapeau* of Article 28 (1) of the CRC and, thus, making all other elements of the right to education dependent upon it.¹²³

States Parties to the CRC should thus make education available and accessible ‘on the basis of equal opportunities’. It involves an accessory obligation, putting an added protection layer around the subjective rights in Article 28 (1). Verheyde is of the opinion that the reference to

¹²¹ However, the CRC Committee in its General Comment NO. 9 emphasises that the barrier is not the disability itself, rather it is a combination of social, cultural, attitudinal and physical obstacles which children with disabilities encounter in their daily lives. The strategy for promoting their rights is therefore to take the necessary action to remove those barriers: CRC Committee General Comment No. 9, para 5; Rosenthal, E. ‘The Rights of Children with Disabilities in Vietnam: Bringing Vietnam’s Laws into compliance with the UN Convention on the Rights of Persons with Disabilities’ UNICEF (2009) 22.

¹²² Combrinck (n 45 above) 307.

¹²³ M Verheyde ‘Article 28: The right to education’ in A Allen et al (eds) *A commentary on the United Nations Convention on the Rights of the Child* (2006) 36.

‘equal opportunities’ is a stronger formulation than the one in Article 21 (1) of the CRC since it more expressly requires the States not only to ensure formal equality but also substantive equality, which often requires affirmative action policies.¹²⁴

But the article contains no specific reference to the CWDs right to be educated alongside his or her peers in a mainstream school, the concept of inclusion.¹²⁵ According to Hodgkin and Newell, the phrase ‘in a manner conducive to the child’s achieving the fullest possible social integration’ in Article 23 (3) of the CRC shows an inclination towards inclusive education.¹²⁶ Despite this omission, the CRC Committee asserts that ‘inclusive education’ should be the goal of educating CWDs¹²⁷ because they are often segregated from mainstream education under the guise of ‘special education’. It has noted, however, that:

Inclusion should not be understood nor practiced as simply integrating children with disabilities into the regular system regardless of their challenges and needs...The manner and form of inclusion must be dictated by the individual educational needs of the child, since the education of some children with disabilities requires a kind of support which may not be readily available in the regular school system.¹²⁸

Thus, even though the CRC failed to mention inclusive education in an explicit manner, it can safely be argued that the CRC promotes inclusive education as an effective way of educating CWDs.

¹²⁴ As above.

¹²⁵ During the drafting of Article 23 even though it was not discussed in any depth, there was a debate on whether the best interest of the child would be served by the establishment of special schools for children with disabilities, or by fully integrated education. Van Bueren, G. *The International Law on the Rights of the Child* (1998) 359.

¹²⁶ Hodgkin and Peter Newell *Implementation Handbook for the UN Convention on the Rights of the Child* (2002) 320415.

¹²⁷ CRC General Comment No.9, para. 66. Despite the CRC’s failure to explicitly mention inclusive education, preference to and a lean towards the concept can also be seen in the General Discussion by the CRC Committee on the rights of children with disabilities held in 1997. One significant outcome of the day of General Discussion was the point that segregation of children with disabilities ‘for care, treatment or education’ represented a breach of the Convention. Additionally, both the UN Standard Rules on the Equalisation of Opportunities for Persons with Disabilities and the Salamanca Statement clearly indicate that the existence of separate ‘special’ educational provision is only acceptable insofar as mainstream education has not yet developed sufficiently to accommodate all children: see CRC/C/66, para.338(d). <http://www.unchr.ch/html/menu2/6/crc/doc/days/disabled.pdf> ; Center for Studies on Inclusive Education ‘The UN Convention on the Rights of the Child in a nutshell’ (2010) <http://www.csie.org.uk/inclusion/child-rights.shtml> (accessed on 28 March 2012).

¹²⁸ CRC General Comment No.9, paras 66-67.

2.3.4 The Right to Free and Compulsory Primary Education

At the level of primary education, the CRC further requires the provision of free education.¹²⁹ States Parties to the CRC, hence, must take immediate measures to make primary education cost-free. The CRC Committee considers the cost free aspect of primary education as key and therefore strongly recommends the States to fulfill this obligation.¹³⁰ Accordingly, CWDs regardless of their economic situation are entitled to free primary education and States are under obligation to take immediate steps to make that happen.¹³¹

Article 28 holds that education should be compulsory. This puts pressure on States to promote school attendance, for example by providing transport facilities and food provision.¹³² The obligation of free and compulsory education with respect to primary education of CWDs may bring up new issues pertaining to the States' obligations given that CWDs need additional facilities and accommodation to access education in an equal foot with others.¹³³ For example, some children with hearing impairments may need assistive hearing devices.

In terms of duration, the notion of 'education' in Article 28 (1) has not been defined. Neither the beginning nor the end of education is pointed out. It thus remains open at what stage education has to start.¹³⁴ Pre –primary education is particularly important for CWDs. Thus a specific mention of the importance of early intervention and pre-school education in the CRC could have helped to reduce the impact of impairments, as preschool education can be used for the early identification of impairment and to recognize the impact on children's well-being and development. It can also be used as a method for involving parents in the process of care and

¹²⁹ CRC, art 28(1)(a).

¹³⁰ E.g. CRC Committee, Concluding Observations: Senegal (UN Doc. CRC/C/46, 1995), paras. 128 and 142; Lebanon (UN Doc. CRC/C/54, 1996), para. 56.; Zimbabwe (UN Doc. CRC/C/54, 1996), para. 89; Kenya (UN Doc. CRC/C/111, 2001), para. 135; Cameroon (UN Doc. CRC/C/111, 2001), paras. 379-380; the Ivory Coast (UN Doc. CRC/C/108, 2001), paras. 337-338; the Gambia (UN Doc. CRC/C/111, 2001), paras. 452-453; and South Africa (UN Doc. CRC/C/94, 2000), para. 447.

¹³¹ It is noteworthy that the notion of 'free' goes beyond the principle of free access. The CRC Committee in its concluding observations to the State Parties' reports, identifies the obligation of assistance to purchase uniform and school books, at least for children of poor families as part of the obligation to provide for cost-free primary education: See CRC Committee, *Concluding Observations: Sierra Leone* (UN Doc. CRC/C/94, 2000), para. 447. 180-181; *the Central African Republic* (UN Doc. CRC/C/100, 2000), para. 468; *Cameroon* (UN Doc. CRC/C/111, 2001), para. 380; *Guinea-Bissau* (UN Doc. CRC/C/118, 2002), para. 75; and *Mozambique* (UN Doc. CRC/C/114, 2002), para. 306.

¹³² K. Tomaševski 'Free and Compulsory Education for All Children; the gap between promise and performance' (2001) 13.

¹³³ See The Committee on Economic, Social and Cultural Rights (ESCR), General Comment No 5 'Persons with disabilities' (1994) para 35.

¹³⁴ Verheyde (n 123 above) 13.

education.¹³⁵ This in turn provides an opportunity for the parents to acquire skills and gain confidence in a supportive atmosphere in the management of the disability.¹³⁶ It is therefore unfortunate that there is an absence of a provision in the CRC to this effect.

The practice of the CRC Committee, however, directs to the inclusion of pre-schooling. The Committee indeed asks the States in its reporting guidelines to report on ‘any system or extensive initiatives by the State to provide early development and education services for young children’.¹³⁷ This benefits CWDs as it puts pressure on States to start taking pre-primary education seriously and take the lead in providing the service.

Moreover Article 28 stresses the importance to promote regular attendance in school and to encourage reduction of drop-out rates, besides stressing access to education.¹³⁸ The phenomenon of children dropping out of school is common. Poverty may be the driving cause in many societies –but even in developing countries, children drop out of school for other reasons, for example, because learning disabilities have not been identified and helped.¹³⁹ Thus Hodgkin and Newell are of the opinion that subparagraph (e) is particularly significant as it extends the State’s responsibilities beyond simply allocating sufficient resources into schools and passing laws compelling children to attend those schools – States must also take steps to ensure that what happens in school is sufficiently valuable and attractive to keep children there.¹⁴⁰ This provision is valuable to CWDs as it will encourage States to make the necessary adjustments and accommodation in mainstream schools with the intention to minimize drop-outs.

School discipline is also brought up as something to be governed in accordance with the child’s human dignity embedded in the CRC.¹⁴¹ This denotes discipline in schools should respect the

¹³⁵ As above, 359.

¹³⁶ As above.

¹³⁷ CRC Committee, *General Guidelines regarding the form and the contents of the periodic reports* (UN Doc. CRC/C/58, 1996), para. 106.

¹³⁸ CRC, art 28(1) (e).

¹³⁹ Hodgkin and Newell (n 106 above) 320.

¹⁴⁰ As above; the CRC Committee has taken a keen interest in State’s implementation of this obligation, not least because the children with the highest rates of school drop-out tend to come from the groups generally discriminated against in education – among others, children with disabilities. The Committee has also encouraged countries to give priority to a variety of measures combating school drop-out, including comprehensive policy reviews. The Committee has also encouraged countries to give priority to a variety of measures combating school drop-out, including comprehensive policy reviews.

¹⁴¹ CRC, art 28 (2).

dignity of CWDs. Schools must be run in an orderly way – without the use of violence so that CWDs benefit from education. Any form of school discipline should take into account their human dignity.¹⁴²

While Article 28 of the CRC concerns the right to education, emphasising access to and availability of education, issues of content and quality in education are stated in Article 29 which will be presented below.

2.3.5 Aims of Education

Article 29 (1) reflects a consensus of world opinion¹⁴³ about the primary goals of education and is the subject of the Committee's first General Comment.¹⁴⁴ In Article 29 the goals of education are defined in terms of the potential of each child and the scope of the curriculum, clearly establishing that education should be a preparatory process for promoting and respecting human rights.¹⁴⁵ Thus the Article sets out a framework of obligations to provide education that promotes children's optimum development. It "highlights the need for educational processes to be based on the very principles it enunciates."¹⁴⁶

Both Article 28 and 29 of the CRC do not make explicit reference to CWDs. However the CRC Committee's General Comment No. 1 on the aims of education has contributed to identify the provisions relevance and application for CWDs.¹⁴⁷ Accordingly General Comment No. 1 clearly establishes that under the CRC, respect for the child's right to education is a must for ensuring respect for all the child's rights.¹⁴⁸ Thus an education system would be contrary to the Convention if it is physically inaccessible or fails to consider the best interest of the child in

¹⁴² (n 131 above).

¹⁴³ The governing phrase of *chapeau* of article 29 (1) on the aims of education starts, uniquely: "States Parties agree...". Textually, this can, of course, be traced to the article's source in the International Covenant on Economic, Social and Cultural Rights, but it is significant that the phrase was retained for this Convention. The wording emphasizes that there is international consensus as to the aims of education which surmounts the often hostile boundaries of religion, nation and culture erected across so many parts of the world: Hodgkin and Newell 438.

¹⁴⁴ CRC Committee General Comment No. 1 (2001).

¹⁴⁵ As above; Committee on the Rights of the Child, 'General Comment No. 7: Implementing child rights in early childhood', CRC/C/GC7 (2005).

¹⁴⁶ CRC Committee General Comment No. 1 (2001) para. 2.

¹⁴⁷ Kilkelly (n 47 above) 199.

¹⁴⁸ As above, 200.

disciplinary or other matters as it would fail to reflect the values that education is trying to pass on to the child.¹⁴⁹ General Comment No. 1 further elaborates this by stating that:

“the values of non-discrimination and equal treatment, respect for the human rights of others and the environment, development of respect for cultural and national values and preparation of the child for responsible life in a free society are as important to disabled children as to their non-disabled peers, if not more so.”¹⁵⁰

Thus Article 29 of the CRC provides for the right to education of CWDs that is empowering in order for them to develop life skills, learning and other capacities. The Article demands attention to be given to the nature of teaching, the content of the curriculum and learning environment which should be open to the needs of all children including CWDs.¹⁵¹

2.3.6 “Progressive realisation” and “to the maximum extent of its available resources”

States Parties may fulfill the obligations set out under Article 28 of the CRC “progressively”¹⁵² and “to the maximum extent of their available resources.”¹⁵³ The term “progressively” is in consideration of the fact that second generation rights including the right to education will generally not be achieved fully in a short period of time owing to lack of resources. Regardless, progressive realisation does not justify doing nothing or moving forward in a sluggish manner. Rather the concept of progressive realisation requires states to take the necessary steps within a reasonably short period of time after the CRC enters into force for them.¹⁵⁴

The phrase ‘to the maximum extent of their available resources’ implies that services and programmes for children should be a priority in resource allocation.¹⁵⁵ The CRC Committee has argued that “even where the available resources are demonstrably inadequate, the obligation remains for a State party to strive to ensure the widest possible enjoyment of relevant rights

¹⁴⁹ As above.

¹⁵⁰ As above.

¹⁵¹ UNESCO (2007) (n 78 above) 33.

¹⁵² CRC, art 28.

¹⁵³ CRC, art 4; also see Julia and Mezmur (n 3 above) 11 for more detail on article 28 of the CRC.

¹⁵⁴ Julia and Mezmur (n 3 above) 11.

¹⁵⁵ The question as to when exactly the failure of a State to use the available resources to the maximum extent amounts to a breach of the Convention is, therefore, a difficult one to answer, all the more because the obligations to protect and to fulfill are obligations of result, leaving a large discretion to the State as to the means to accomplish these obligations. The precise content of these obligations is, therefore, likely to vary from one State to another; and over time in relation to the same State: Verheyde (n 123 above) 53.

under prevailing circumstances.”¹⁵⁶ The CRC Committee reminds that State Parties are responsible for ensuring that adequate funds are allocated to CWDs along with strict guidelines for service delivery. Specific reference is made to funding for programmes necessary for including CWDs into mainstream education (for instance remodeling schools to make them physically accessible).¹⁵⁷

These rights, recognised in the CRC, have been amplified and placed in a wider context in the CRPD. The CRPD reinforces and complements the CRC, providing an additional framework for the protection of the rights to education of CWDs. The next section will discuss in detail the provisions of the ACRWC followed by the CRPD with respect to the right to education of CWDs.

2.4 The African Charter on the Rights and Welfare of the Child (ACRWC)

The major African Regional framework that addresses the rights of CWDs is the ACRWC.¹⁵⁸ The ACRWC was adopted by the member states of the Organization of African Unity (OAU) and entered into force on 29 November 1999.¹⁵⁹ The ACRWC reflects the same minimum acceptable standards of the treatment of children as the CRC. However, many provisions offer a higher standard and thus both complement the CRC and ensure a higher threshold for the promotion and protection of children’s human rights.¹⁶⁰ In particular, one can see that this added protection is imperative given the high volumes of exclusion of CWDs from education and the additionally high levels armed conflict in the continent which is the major cause of disability.

With regard to disability related provisions in the ACRWC, Article 3 outlines the principles of non-discrimination on various grounds, similar to the CRC, although it fails to expressly include the aspect of disability as a ground in respect of which a child may not be discriminated against. It has been noted that it is unlikely that this means that discrimination against CWDs is allowed

¹⁵⁶ Committee on the Rights of the Child, ‘General Comment No. 5’, CRC/GC/2003/527 (2003) para. 8.

¹⁵⁷ Combrinck (n 45 above) 308.

¹⁵⁸ The African Child Policy Forum (ACPF) *Missing Voices: Children with Disabilities in Africa: Addis Ababa: The African Child Policy Forum* (2009) 24.

¹⁵⁹ Lloyd A, ‘Evolution of the African Charter on the Rights and Welfare of the Child and the African Committee of Experts: Raising the Gauntlet’ *The International Journal of Children’s Rights* (2002) 10: 179-198.

¹⁶⁰ Lloyd A ‘Regional Developments on the Rights and Welfare of Children in Africa: A general report on the African Charter on the Rights and Welfare of the Child and the African Committee of Experts’ Unpublished article, Centre for Legal Research, Faculty of Law, University of the West of England, Bristol, UK (2003) 1.

<http://www.uwe.ac.uk/law/research/acr/report.htm> (accessed 30 September 2012).

under the ACRWC, considering that the Article starts with granting the rights to ‘every child’.¹⁶¹ However, it needs to be observed that this omission is unfortunate, since the ACRWC in this way misses an opportunity to reaffirm the rights of CWDs.¹⁶²

The ACRWC further includes a specific Article on CWDs. This treaty addresses CWDs under the degrading term of “handicapped children”. The need to change this inappropriate and offensive terminology has been brought to the attention of the African Union (AU).¹⁶³ It can be noted that as was the case with the CRC, the ACRWC takes a “special needs” and “special measures” approach to CWDs, rather than a rights-based approach.¹⁶⁴

Moreover the Article 13 of ACRWC limits that protection for CWDs by making it subject to available resources. On a positive note, assistance under the ACRWC is not dependent on the circumstances of the parent or caregiver- as is the case under Article 23 of the CRC. It has been suggested that this could be to the advantage of CWDs in need: in this manner, States are allowed to consider the circumstances of the child’s situation and not those of his or her parents. In this manner it broadens the group of persons eligible for state assistance, thus it could be said the Article offers a higher level of protection.

Unfortunately education is not included in the list of facilities and services to which a CWD should have access to under Article 13.¹⁶⁵ Though this provision is silent about education of CWDs, the right to education is provided under Article 11 of the ACRWC in a detailed manner. However since the educational needs of CWDs are different from children without disabilities, it is unfortunate that Article 13 fails to explicitly make a reference on education.¹⁶⁶

Paragraph 3 of Article 13 of the ACRWC is a new addition to the formulation outlined in the CRC. It aims to strengthen mobility for CWDs and their access to public institutions and

¹⁶¹ Boezaart and Skelton (n 119 above) 118.

¹⁶² As above.

¹⁶³ ‘Promoting the Right to Education for Children with Disabilities’ <http://www.saaled.org.za/R2ECWD/docs/Factsheet%201%281%29.pdf> (accessed on 6 March 2012)

¹⁶⁴ Combrinck (n 45 above) 311.

¹⁶⁵ The list of facilities does not include healthcare services and rehabilitation services either: ACRWC, art 13; Boezaart and Skelton (n 119) 118 for more detail on Article 13 of the ACRWC.

¹⁶⁶ Combrinck (n 45 above) 311.

facilities. The relevant paragraph is especially noteworthy in the context of education and the accessibility of public school buildings. The State's obligation could include different measures, such as construction of public buildings with easy access for PWDs (for example, stairs must be supplemented by ramps, doors must be wide enough to all passage for wheelchairs, and so on) and could extend to the availability of public transport for PWDs.¹⁶⁷

2.5 The Convention on the Rights Persons with Disabilities (CRPD)

The CRPD was adopted on 13 December 2006 and entered into force on 3 May 2008.¹⁶⁸ It is the first legally binding international instrument to deal with the rights of PWDs and the first international human rights treaty of the 21st century.¹⁶⁹ The rights delineated in the CRPD are not newly created rights: they are rights which already exist in the core human rights instruments mostly guaranteed to everyone.¹⁷⁰ This is because the CRPD was intended to clarify, consolidate and strengthen the already recognised rights by previous human rights instruments in light of PWDs, not to create new rights *per se*. Thus it includes provisions on all facets of life, such as, education, health, employment, and accessibility.¹⁷¹

However, unlike its predecessors, the CRPD offers CWDs an unprecedented level of protection and the rights are tailored and articulated in response to specific needs and circumstances of CWDs.¹⁷² The CRPD endorses the social model of disability that that recognises disability as the result of “the interaction between persons with impairments and attitudinal and environmental barriers”.¹⁷³ In this manner it marks a paradigm shift in attitudes and approaches to PWDs by considering them as rights holders and acknowledging environmental barriers as causes of

¹⁶⁷ As above.

¹⁶⁸ Convention on the Rights of Persons with Disabilities (CRPD), GA Res. 61/106 (2007).

¹⁶⁹ UN News Centre (2006).

¹⁷⁰ Aiko Akiyama 'Convergence between the International Convention on the Rights of Persons with Disabilities and the Biwako Millennium Framework for Action' *Asia Pacific Disability Rehabilitation Journal* Vol. 18 NO. 1 (2007) 20; also see D. MacKay, 'The United Nations Convention on the Rights of Persons with Disabilities' *Syracuse Journal of International Law and Commerce*, vol. 34(2007) 323 & 328.

¹⁷¹ See D. MacKay, 'The United Nations Convention on the Rights of Persons with Disabilities' *Syracuse Journal of International Law and Commerce*, vol. 34 (2007) 323 & 328.

¹⁷² It need be recalled that with the lone exception of Article 23 of the CRC, the previous core human rights conventions do not even reference disability. Nor do these instruments reflect a social model of disability, or expressly link barriers experienced by persons with disabilities in their communities to the realization of their rights. See Council of Europe 'Protecting and Promoting the Rights of Persons with Disabilities in Europe: towards full participation, inclusion and empowerment' Swedish Conference on UN Disability Convention and Council of Europe Disability Action Plan (2008) 46; Schulze 16.

¹⁷³ Though it is included in the Preamble and the Article 1 (Purpose) and not in the Article 2 (Definitions), the idea clearly negates the concept of disability as an individual pathology and draws attention to another dimension, in which the onus is on society (Governments and other stakeholders) to remove barriers for persons with disabilities. See CRPD Preamble, para (e); UN Human Rights Office of the High Commissioner for Human Rights (OHCHR), *Monitoring the Convention on the Rights of Persons with Disabilities: Guidance for Human Rights Monitors* (2010) 13; Akiyama22.

disability.¹⁷⁴ Article 7 deals with CWDs, and obliges states to take the required steps to ensure that CWDs enjoy all human rights and fundamental freedoms on an equal foot with others.¹⁷⁵ However it has been noted that all the provisions in the CRDP apply equally to CWDs, not just Article 7.¹⁷⁶

2.5.1 Inclusive Education.

The CRPD clearly stipulates for CWDs not to be excluded from the general education system.¹⁷⁷ However the CRPD does not imply that students can never benefit from special education, but instead appears to recognise that students in “special” schools are often segregated and marginalised, failing to enjoy the range of academic and recreational opportunities available to students in mainstream schools.¹⁷⁸ By demanding that States ensure an inclusive education system, the weight is clearly placed on the system to become inclusive, rather than on the individual to be included – a shift from a medical model to a social model approach.¹⁷⁹ Thus the CRPD’s definition of inclusive education appears to require educators to determine the ideal placement of students based on their individual needs and to establish access to general schools as the norm.¹⁸⁰

Even though there is no universal definition of the term ‘inclusive education’, the CRPD contains language reflecting a rising international consensus about the primary features of

¹⁷⁴ UN Human Rights Office of the High Commissioner for Human Rights (OHCHR), *Monitoring the Convention on the Rights of Persons with Disabilities: Guidance for Human Rights Monitors* (2010) 13.

¹⁷⁵ CRPD, art 7.

¹⁷⁶ The preamble recognizes children with disabilities’ right to fully enjoy all human rights on an equal foot with others. The general principles include respect for the evolving capacities of the child and children’s right to preserve their identity. The general obligation requires that children with disabilities must be consulted when States parties are developing and implementing legislation and policies: see ACPF The African Child Policy Forum (ACPF) *Missing Voices: Children with Disabilities in Africa: Addis Ababa: The African Child Policy Forum* (2009) 24.

¹⁷⁷ See CRPD, art. 24(2)(a)-(b).

¹⁷⁸ Because of a possibility of a gap on inclusive education, Article 24 of the CRPD was a topic of controversy right until the last day of the Ad Hoc Committee (AHC). Some argued that the “education of children with disabilities in the general education system should be the rule and the provision of special education services should be the exception.” Other members were in favor of a “choice” model, in which “specialist education services should be provided not only where the general education system was inadequate, but should rather be made available at all times without a presumption that one approach was more desirable than the other.”: see Vanessa Torres Hernandez ‘Making Good on the Promise of International Law: The Convention on the Rights of Persons with Disabilities and Inclusive Education in China and India’ *Pacific Rim Law and Policy Journal Association* (2008) 505; Schulze 61-174; U.N., Ad Hoc Committee on a Comprehensive and Integral International Convention on the Protection and Promotion of the Rights and Dignity of Persons with Disabilities, *Report of the Working Group to the Ad Hoc Committee*, at 22 n 61, UN Doc A/AC.265/2004/WG.1 (2004) [hereinafter *Working Group Report*].

¹⁷⁹ Stubbs, S. *Inclusive Education: where there are few resources* (2002) 21.

¹⁸⁰ Vanessa Torres Hernandez ‘Making Good on the Promise of International Law: The Convention on the Rights of Persons with Disabilities and Inclusive Education in China and India’ *Pacific Rim Law and Policy Journal Association* (2008) 505505.

inclusive education.¹⁸¹ Article 24 of the CPRD provides the following points to guide States seeking to create and maintain an inclusive education system;¹⁸² it requires States to ensure that CWDs have non-discriminatory access to the general education system, their needs are reasonably accommodated and effective individualized support is provided which takes into account each child's unique needs.¹⁸³ To have a clear picture of what inclusive education entails, the above mentioned features as listed in the CPRD will be discussed in detail below.

2.5.1.1 Non-discriminatory Access

One of the primary features of inclusive education is that all CWDs attend regular schools along with their non-disabled peers. To this end, under Article 24, the CRPD requires states to ensure that CWDs are not excluded from the general education system on the basis of disability,¹⁸⁴ and that CWDs shall have access to an inclusive, quality, and free primary education and secondary education on an equal basis with others in the communities in which they live in.¹⁸⁵

This indicates the need for a legislative guarantee for free and compulsory basic education to all children, without discrimination on the basis of disability. State Parties are expected to remove legislative and policy barriers to the inclusion of children, in primary and secondary education and repeal any existing legislation which defines any group of CWDs as “ineducable”. There should be a recognised right to early identification and assessment to ensure that CWDs are able to acquire the educational support and services they need from the earliest possible age.¹⁸⁶

2.5.1.2 Reasonable Accommodation

The CPRD requires States to provide reasonable accommodations to CWDs, another distinctive characteristic of the Convention.¹⁸⁷ The CRPD obliges states to make reasonable accommodation to the extent that the provision does not impose on them a disproportionate or undue burden.¹⁸⁸

¹⁸¹ UNICEF (2007) (n 60 above) 1; Inclusion International *Better Education for All: When We're Included Too* (2009); *Hear our Voices: A global report, People with intellectual disability and their families speak out on poverty and exclusion* (2006) 24.

¹⁸² CRPD, art 24 (2).

¹⁸³ CRPD, art 24 (2)(e).

¹⁸⁴ CRPD, art 24 (2)(a).

¹⁸⁵ As above.

¹⁸⁶ Inclusion International *The Implications of the Convention on the Rights of the Child (CRPD) for Education for All* (2009)..

¹⁸⁷ CRPD, art 24; the concept of ‘reasonable accommodation’, originally being a part of the civil rights law of the United States (1964) to respect practices of different religions at the work place, it refers to necessary and appropriate modification and adjustment not imposing a disproportionate burden, needed to ensure the enjoyment of all rights by persons with disabilities on equal basis with others.

¹⁸⁸ CRPD, art 2; to establish a lawful exemption from the duty to accommodate, the school must prove that accommodating the needs of an individual would impose an undue or disproportionate burden on the organization considering factors.UN

There is no universal standard for reasonable accommodation.¹⁸⁹ However, in the context of education, reasonable accommodation may refer to “steps that can be taken without significant difficulty or expense to allow students to get an equal education by limiting as much as possible the effects of their disabilities on their performance.”¹⁹⁰

2.5.1.3 Individualized Support

Another distinctive characteristic of the CPRD is the concept of individualized support which States are required to provide for CWDs within the framework of inclusive education.¹⁹¹ For States to fulfill the obligation of individual support they must ensure schools to recognise that each child has unique characteristics, interests, abilities, and learning needs, and that schools provide individualized support through a child-centered pedagogy.¹⁹² The CRPD requires that effective individualized support measures to be made available to increase academic and social development in accordance with the goal of inclusion.¹⁹³

According to International Disability Alliance (IDA), individualized support entails making available a learning environment which for instance will require setting up Braille or Sign language and employing teachers who are trained in sign language for deaf and blind children. For children with hearing impairment individualized support demands, among others, providing assistive devices, listening devices, captioning, as well as ensuring the environment has good acoustics and a welcoming attitude in order for CWDs to participate fully in education.¹⁹⁴

Human Rights Office of the High Commissioner for Human Rights (OHCHR), *Monitoring the Convention on the Rights of Persons with Disabilities: Guidance for Human Rights Monitors* (2010)21.

¹⁸⁹ Human Rights Watch (HRW) ‘Futures Stolen: Barriers to Education for Children with Disabilities in Nepal’ (2011) 43.

¹⁹⁰ As above.

¹⁹¹ CRPD, art 24 (2)(e).

¹⁹² As above.

¹⁹³ As above.

¹⁹⁴ However there are some instances where the option for separate learning environments might be the best thing to do so as to “maximise academic and social development”. For instance for deaf, blind and deaf blind students, and in some cases for hard of hearing students, separate learning environment might come into picture. The Standard Rules also advocates separate learning environments for these students under the heading of “special education,” but “special education” also implies separation from the general educational system of the country and results in segregation and denial of the right to education for many CWDs. Contrary to this, the CRPD Article 24 insists on keeping all students within the general education system and suggests diverse ways to meet their needs: International Disability Alliance (IDA) ‘Suggestions for disability-relevant recommendations to be included in the Concluding Observations of the Committee on Economic, Social and Cultural Rights 48th Session (30 April – 18 May 2012)’ IDA recommendations on Ethiopia.

2.5.2 Progressive Realisation of Educational Rights under the CRPD

Under the CRPD Governments are under obligation to take the necessary measures to the maximum extent of their available resources, and where needed within the framework of international cooperation,¹⁹⁵ to achieve the progressive implementation¹⁹⁶ of the right to education of CWDs. However progressive realisation cannot be used as a delaying tactic if resources (such as international aid) are actually available, nor can it be invoked in a way that discriminates against particular groups. When invoked progressive realisation requires States Parties to continually take whatever action they can, to show how they are implementing economic, social and cultural rights. Thus it will be a task of disability organisations to ensure that “progressive realization” does not translate to a lack of realisation.

This entails examining current legislation, practices and procedures to ensure the continuing development of their education systems so that all CWDs have access to education within an inclusive education system. Article 4(2) of the CRPD might be helpful to recall the concept of progressive realisation¹⁹⁷ with regard to the cost involved in providing accessible and inclusive education.

On a different note, the CRPD includes both national and international monitoring mechanisms in order for the Convention to have a positive impact on the quality of life of CWDs and their right to education.¹⁹⁸ Accordingly, at the national level, States have to designate one or more focal points within government to handle matters relating to implementation.;¹⁹⁹ second, States

¹⁹⁵ Article 32 of the CRPD includes a stand-alone article on international cooperation, underlining the importance of international cooperation and development to the full realization of the rights of persons with disabilities. For many resource-deprived countries, the CRPD might imply much greater expenditure and use of resources. However, the inclusion of the provision on “International cooperation” responds to those concerns: see *Thematic study by the Office of the United Nations High Commissioner for Human Rights on the role of international cooperation in support of national efforts for the realization of the rights of persons with disabilities A/HRC/1638* (2010) 3.

¹⁹⁶ See discussion on the concept of progressive realisation in section 2.3.6 of this thesis.

¹⁹⁷ For more info on the concept of ‘international cooperation’, refer to section 2.3.6 of this thesis. The provision’s core is also contained in the general obligations Article 4 of the CRPD; most notably in the obligation to take the protection and promotion of the human rights of persons with disabilities into account in all policies and programmes, and include DPOs.

¹⁹⁸ At the international level, the CRPD provides for monitoring through the creation of a committee of independent experts, called the Committee on the Rights of Persons with Disabilities. At the national level, Article 33 identifies three mechanisms that are relevant for the implementation and monitoring of the Convention. With the partial exception of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which requires party states to set up a national preventive mechanism, the CRPD is the first in international human rights instruments to include a norm featuring national implementation and monitoring structures and their functions at national level: See *Thematic study by the Office of the United Nations High Commissioner for Human Rights on the structure and role of national mechanisms for the implementation and monitoring of the Convention on the Rights of Persons with Disabilities* (2009) 5.

¹⁹⁹ CRPD, art 33 (1).

have to give due consideration to the establishment or designation of a coordination mechanism within government to facilitate actions across sectors and at different levels;²⁰⁰ and third, States have to establish or designate a framework that includes one or more independent mechanisms to promote, protect and monitor the Convention's implementation.²⁰¹

In the first instance, in some countries, at the central government level, responsibility for the right to education of PWDs is often spread among different institutions, such as a ministry for social affairs or a ministry of health. The potential for incoherent policy and legislation and their implementation in the context of inclusive education is obvious.²⁰² This division reflects the cultural perception that CWDs are in need of welfare rather than equality of opportunity. This particular model tends to further segregate CWDs, and shifts the focus from education and achieving social and economic inclusion to treatment and social isolation.²⁰³ A single government institution, the ministry of education, should therefore have the responsibility of ensuring the fulfillment of the right to inclusive education for all.²⁰⁴

This chapter has explored that the international standards on the right to education of CWDs is anchored in a number international instruments to which Ethiopia is party. These include the CRPD, the CRC, and the ACRWC. These instruments require the education of CWDs to be physically and economically accessible without discrimination; the content of education to be of good quality, and that the school environment to be capable of accommodating the learning of all children. Furthermore, the standards require the provision of education to be based on the concept of inclusive education which entails the provision of education that ensures the effective learning of CWDs in mainstream schools together with their non-disabled peers.²⁰⁵ Most of all, the standards expect the conceptualisation of the education of CWDs to be based on the social

²⁰⁰ CRPD, art 33 (1).

²⁰¹ CRPD, art 33 (2); while previous human rights instruments also had monitoring mechanisms, their nature was such that it left a gap between states parties international reports and changes to domestic law and policy which would lead to real change. The CRPD attempts to fill this gap by requiring states parties to establish national mechanisms, including focal points, independent monitoring and full consultation and participation of people with disabilities in the implementation of the convention. Giving real life to these mechanisms could make the convention a real engine of domestic legislative and policy change: (n 139 above) 15.

²⁰² Muñoz (n 48 above) .

²⁰³ WHO (2011) 214.

²⁰⁴ Muñoz (n 48 above) .

²⁰⁵ CRPD, art 24(2) (b).

and human rights models of disability. These models of disability require states to ensure that CWDs are able to access education on an equal foot with other children.

The next chapter analyses the national laws and policies pertaining to education of CWDs in Ethiopia.



CHAPTER THREE

LEGISLATIVE AND POLICY FRAMEWORK ON THE RIGHT TO EDUCATION FOR CHILDREN WITH DISABILITIES IN ETHIOPIA

3.1 Introduction

Examination of laws and policies at the national level is a step closer to discover whether a country has detailed and sufficient laws that is in compliance with international standards.²⁰⁶ It is also important to explore the challenges and opportunities of a given country's education system in order to move forward in upholding the education of CWDs.²⁰⁷ With this view in mind; this chapter looks at the national laws and policies pertaining to education of CWDs in Ethiopia.

Accordingly, discussions will come first on the status of economic social and cultural rights in the Ethiopian legal system to create clarity about what the right to education entails in the country's legal system. Subsequently, 3.3 looks at the current level of access to education to all children in the country since this is likely to impact the level of access to education of CWDs. Then 3.4 will look at the legal framework pertaining to the right to education of CWDs in Ethiopia; finally 3.5 will highlight the policy framework governing the education of CWDs in the country.

3.2 The Status of Economic Social and Cultural Rights in the Ethiopian Constitution

Before directly addressing the main issues regarding the right to education of CWDs in the Ethiopia, it is crucial to assess first whether socio-economic rights have been recognised in the Ethiopian legal system since in the absence of such recognition the main issue will be a non-issue.

The Constitution of the Federal Democratic Republic of Ethiopia (FDRE Constitution)²⁰⁸ incorporates long list of fundamental rights of citizens. Almost one-third of the Constitution is

²⁰⁶ The African Child Policy Forum (ACPF) *Educating Children with Disabilities in Africa: Towards a policy of inclusion* (2011) 3, International Labour Organization (ILO) 'Inclusion of People with Disabilities in Ethiopia' (2009).

²⁰⁷ As above.

²⁰⁸ In Ethiopia, according to article 9 of the Federal Constitution, the Constitution is "the supreme law of the land and any law, customary practice or decision of an organ of state or a public official which contravenes it shall be of no effect." Therefore, all citizens, organs of the government, political organizations, etc have the obligation to respect and obey the Constitution. The

devoted to providing the civil, political, economic, social and cultural rights as well as group rights.²⁰⁹ However, all socio-economic rights are categorised under a heading ‘economic, social and cultural rights’, separate from the civil and political rights.²¹⁰ This fails to underscore the interdependence, interrelatedness and indivisibility of human rights. Social and economic rights are not also elaborated in a well manner as to ensure their justiciability with ease.²¹¹

Moreover the manners in which the socio-economic rights are described are too general and lack clarity.²¹² Article 41 which deals with the socio-economic rights does not provide for all the rights falling within the domain of economic and social rights as one would expect by looking at its title. Thus it makes it difficult to identify the rights guaranteed and the extent of protection afforded to them as the Article is so generic.²¹³ Of course, the phrase “*publicly funded social services*” gives the room to add many of the socio-economic rights not clearly indicated in the Constitution such as the right to education.²¹⁴

The poor formulation of the Article increases the ambivalence regarding the justiciability of this group of rights as it is difficult to clearly delineate the precise scope of the rights.²¹⁵ For instance, Article 41(4) provides: “The state shall have the obligation to allocate ever increasing resources to provide to the public health, and other services”. This does not establish a right to health or education as such. In this regard, the Constitution should follow the formulation employed in the CRC, in a way that creates rights than establish abstract obligations on the government.²¹⁶

Moreover most of these rights are qualified, in that the Government only provides ‘equal access’, or ‘access’, to the socio-economic need to be provided, that this be done ‘within available

Constitution has a preamble and is divided into eleven chapters. The three generation rights happen to be found in the Constitution: see the FDFRE Constitution, Proclamation No. 1/95.

²⁰⁹ Sisay Bogale Kibret ‘Competence and Legitimacy of Ethiopian Courts in the Adjudication of Socio-Economic Rights: An Appraisal of the Challenges and Prospects’ Unpublished LLM thesis Addis Ababa University School of Graduate Studies: School of Law (2010) 56.

²¹⁰ FDRE Constitution, art 41.

²¹¹ However, the rights to property and of labor are given one article each separately.

²¹² Rakeb Mesele, ‘Enforcement of human rights in Ethiopia’, Action Professionals Association for the People (2002) 28.

<http://www.apapeth.org/Docs/ENFORCEMENT%20OF%20HR.pdf> (accessed on 1 November 2012).

²¹³ Kibret (n 209 above) 6.

²¹⁴ FDRE Constitution, art 41 (3); it reads: “Every Ethiopian national has the right to equal access to public funded social services...”

²¹⁵ Sisay A. Yeshanew, ‘The justiciability of human rights in the Federal Democratic Republic of Ethiopia’ *African Human Rights Law Journal* vol. 8 (2008) 4.

<http://ssrn.com/abstract=1530825>> (accessed on October 2013).

²¹⁶ Adem Kassie Abebe ‘Human Rights under the Ethiopian Constitution: A Descriptive Overview’ *Mizan Law Review* Vol. 5 No.1, Spring (2011) 54.

means’, or by ‘allocating resources’ or ‘allocating ever increasing resources’. These qualifications are similar in formulation to qualifications attached to socioeconomic rights in the CRC. Guidance on the meaning of these terms may thus be obtained through reference to the international jurisprudence.²¹⁷

As discussed in the previous chapter, Ethiopia has acceded to almost all the major international human rights instruments which promote the right to education of CWDs.²¹⁸ The Constitution provides that international agreements ratified by Ethiopia are an integral part of the law of the land.²¹⁹ Furthermore, it notes that the third Chapter which is a human rights chapter must be interpreted in a manner conforming to the principles of the UDHR, international covenants on human rights and international instruments adopted by Ethiopia.²²⁰

However incorporation of provisions in international human rights treaties ratified by Ethiopia and their subsequent implementation at all levels has been a subject of academic and judicial debate over years due to hazy wording of the Constitution.²²¹ Albeit the Constitution provides that international treaties ratified by Ethiopia are integral part of the law of the land,²²² confusions are there about the exact procedural requirements a treaty must pass through to be applicable domestically.²²³ The debate still sustains on treaties that recognised socioeconomic rights of CWDs and has impact on effective recognition and implementation of the rights. Yet, based on Article 13 (2) of the Constitution it is possible to refer to international human rights

²¹⁷ Rakeb (n 212) 31.

²¹⁸ See chapter 1, section 1.1 of this thesis.

²¹⁹ The FDFRE Constitution, article 9(4).

²²⁰ As above, art 13(2).

²²¹ The debate on the issue is a broad one and cannot be covered here in this paper. For further reading see Yeshanew (n 215 above); Takele Soboka Bulto, ‘The Monist-Dualist Divide and the Supremacy Clause: Revisiting the status of Human Rights Treaties in Ethiopia’ *Journal of Ethiopian Law* vol. 23 (2003); Ibrahim Idris, ‘The place of International Human Rights Conventions in the 1994 Federal Democratic Republic of Ethiopia Constitution’ *Journal of Ethiopian Law* vol. 20 (2000); Rakeb (n 212 above).

²²² FDRE Constitution, art. 9(4).

²²³ Some argue that once a treaty is ratified by the House of Peoples Representatives, which is the highest legislature in the country and mandated to ratify treaties, it gets immediate effect at all spheres by all organs of the government. Others, however, argue that mere ratification is not enough. They assert that the treaty has to be translated into the official language, which is Amharic, and be proclaimed by the President in the *Negarit Gazeta*, which is the official gazette used to publicize laws: Bulto (n 221 above).

treaties to fill such gaps as are created in the Constitution regarding socioeconomic rights of CWDs.²²⁴

3.3 Free Primary Education in Ethiopia

In Ethiopia, there is no domestic constitutional or legal guarantee that education should be free. Free primary education was introduced with the adoption of the Education and Training Policy (ETP) in 1994 as a major strategy towards achieving the EFA goals.²²⁵ This has led to a rapid increase in the net enrolment rate, which currently stands at 85.3% of primary school aged children.²²⁶

However the Ethiopian Government's emphasis on primary education for all has both positive and negative aspects.²²⁷ On the one hand, having children in class is an achievement on its own. On the other hand, as it can reasonably be expected, the quality of education has been declining due to high enrolment rate. The increased demand has stretched the system far beyond capacity. Thus, while access to primary education has increased, many children still do not complete the first cycle of primary education and repetition and drop-out rates remain high throughout the whole cycle. Drop-out is particularly high in the early primary grades.²²⁸

The key reason is that education in Ethiopia is not genuinely free in a number of ways.²²⁹ The limitations of current schools are well known and include poor infrastructure, a shortage of facilities, books, other materials and qualified teachers. Most schools require students to wear uniform which are not however provided by the schools free of charge.²³⁰ Students must also

²²⁴ Note that according to article 9(4) of the Constitution international human rights instruments ratified by Ethiopia (which serve as interpretation thresholds for the bill of rights in the Constitution as per article 13(2)) are part and parcel of the law of the land.

²²⁵ Ethiopia's formal education system has an eight-year cycle for primary education and a four-year cycle for secondary education. Primary education is further divided into two cycles, of which the first four years aim at the attainment of a basic education while the second four years aim at the attainment of a general primary education. Secondary education is also divided into two cycles of which the first two years are for the attainment of a general secondary education while the second two years prepare students for higher education and the world of work: see Jeilu Oumer 'The challenges of Free Primary Education in Ethiopia' University of Addis Ababa 28.

²²⁶ The Federal Republic of Ethiopia, Ministry of Education *Education Sector Development Program IV (ESDP IV) 2010/2011 – 2014/2015 Program Action Plan*, Addis Ababa (2010) 12.

²²⁷ As above.

²²⁸ MOE (2010) 10.

²²⁹ K Tomasevski 'The State of the Right to Education Worldwide: Free or Fee – 2006 Global Report' (2006). <http://www.tomasevski.net/documents/2006GlobalReport.pdf> (accessed on 9 March 2012).

²³⁰ Early Childhood Transitions Research 'Equity and Quality? Challenges for early childhood and primary education in Ethiopia, India and Peru' Working Paper No. 55, Studies in Early Childhood Transitions (2009) 14.

provide their own books and writing instruments.²³¹ The worst challenge in primary education is overcrowded schools. Between 1999 and 2005 the pupil-to-teacher ratio in primary education increased by more than 12% (from 1:64 to 1:72 students). This calculation, however, is based on official enrolment figures, and the numbers of children attending class on any given day is often much lower, although when teachers are absent it can be very much higher.²³² Currently class size officially is 50 but often is many more. There are few facilities for CWDs.²³³

In the next section, the right to education of CWDs under different laws, policy, strategies and programs of Ethiopia will be discussed.

3.4 Legislative Framework

3.4.1 The Right to Education of Children with Disabilities in the FDRE Constitution

How disability is incorporated in the constitutional law framework is of utmost importance, since these provisions have far-reaching effects.²³⁴ Constitutional provisions are binding on all state authorities, meaning that all legislation and policies adopted by the government must be in alignment with the constitution. Therefore, inclusion of provisions relating to PWDs in the constitution can shape the entire legal framework in a country.²³⁵

The FDRE Constitution is the supreme law of Ethiopia.²³⁶ Thus it is necessary to focus on all its coverage of disability. First, the special protection accorded to PWDs in the Constitution will be discussed in a very concise manner followed by the general protection provided for the right to education of CWDs under the Constitution.

As far as the explicit provision about PWDs, in the FDRE Constitution is concerned Article 41 (5) says,

²³¹ As above.

²³² Early Childhood Transitions Research 'Equity and Quality? Challenges for early childhood and primary education in Ethiopia, India and Peru' Working Paper No. 55, Studies in Early Childhood Transitions (2009) 14.

²³³ As above.

²³⁴ UNICEF (2007) (n 60 above).

²³⁵ As above.

²³⁶ FDRE Constitution, art 9.

“the state within available means shall allocate resources to provide rehabilitation and assistance to the physically and mentally disabled, the aged and children who are left without parents or guardians.”

Initially the phrase “physically and mentally disabled” is a reflection of the misconception of disability as clearly discussed in the preceding chapters.²³⁷ Furthermore no identification is set to demonstrate the productivity or ability of the person. Rather it requires rehabilitation and assistance. Since extending assistance is based on a welfare model, the provision sounds charity based. As discussed in the previous chapters dealing with the approaches to disability, this approach is opposed for its effect of exclusion.²³⁸

Another shortcoming of Article 41 (5) in relation to PWDs has to do with the subjects in the provision. When one looks at the other groups recognised in the Constitution they are the subjects of the rights guaranteed. The provisions indicated their full rights and obligations.²³⁹ As far as the Article concerning PWDs the State is under obligation to provide rehabilitation. PWDs are there with the need to be assisted but not with the right to be claimed. This again takes us to another indispensable problem of the provision. Accordingly, if the Constitution is to treat citizens, especially groups, on equal footing this can demonstrate that the rest groups can claim, whereas this is not the case when it comes to the provision concerning PWDs.

Historically, viewing disability as a welfare and/or medical issue and “protecting” PWDs has prevented inclusion in society. Particularly in the context of constitutions, which form the basis for the entire national legislative frameworks, such conflicting provisions can have far-reaching consequences.²⁴⁰ Thus, it is critical to ensure that the country’s entire body of law, beginning with the Constitution, is consistent in applying the human rights-based approach when legislating on the rights of PWDs. However Constitutional amendment is not as easy as amendment of other laws. Article 105 of the FDRE Constitution provides extremely stringent requirements for the

²³⁷ See chapter one, section 1.8 & 1.9 of this thesis which discusses description and terminology of disability respectively.

²³⁸ Refer to chapter one section 1.8 of this thesis.

²³⁹ For instance, Article 35 of the Constitution, the part dealing with women’s rights reads as “Woman shall have equal rights...” Article 36 of the Constitution dealing with issue of children says “every child has the right to...” whereas in the Constitution Article 41 (5) says “the state shall allocate within available means....” The difference between the two provisions above and the one taking about disability is others have been entitled to the right of which they can claim directly and expressly. Accordingly, laws have been amended based on their constitutional rights.

²⁴⁰ UNESCO (2007)(n 78 above) 17.

amendment of its chapter on fundamental rights and freedoms. Yet the present charitable approach of the Constitution may result in an irreversible desire of dependency on the part of PWDs.

The other important provision raising the issue of disability is Article 25 of the Constitution, the anti-discrimination clause. While Article 25 outlaws discrimination, categories of groups listed for non-discrimination do not include PWDs.²⁴¹ In fact, the last clause “other status” can be interpreted to include disabilities. It is however important for Constitutional non-discrimination frameworks to include disability as a prohibited ground, and provide for redress in case of discrimination.²⁴² With regard to provisions pertaining to the right to education within the Constitution, the Bill of Rights in the Constitution of Ethiopia makes no specific reference to the right to education of children with disabilities or indeed other persons. However, an indirect reference to the right can be found in Article 41 of the Constitution. Article 41, which addresses economic, social and cultural rights, provides that all Ethiopians have the right to equal access to social services run with state funds.²⁴³ To this domain it is possible to add education. However, the Constitution does not specify the rights of PWDs to inclusive education or guarantee the right to free and compulsory primary education for anyone for that matter.

As mentioned above there is no Constitutional guarantee for free primary education and thus CWDs are not entitled to it under the Constitution. However based on the Article 41 (3) they are entitled to access adequate and appropriate assistance and the government is obliged to create an enabling environment and remove any barriers that may hinder their right to access education. Moreover, Article 41 (3) specifically refers to ‘equal access, making a clear linkage between the socio-economic right and equality clause. Here, the State has the obligation to prevent laws or policies that have the effect of excluding CWDs from the full and equal enjoyment of their access to education from being promulgated. The State has, in addition, to take positive steps to ensure that CWDs benefit equally from education.²⁴⁴

²⁴¹ The grounds for non-discrimination include race, nation, nationality, or other social origin, colour, sex, language, religion, political or other opinion, property, birth or other status.

²⁴² UNESCO (n 78 above) (2007) 40.

²⁴³ FDRE Constitution, 41 (3).

²⁴⁴ Rakeb (n 212 above) 32.

From the foregoing discussion it appears that the importance accorded to the right to education in the FDRE Constitution is very minimal. In the opinion of this writer, the fact that the right to education is not explicitly mentioned in the Constitution will adversely affect the CWDs to effectively exercise and enjoy the right to education. However the fact that the Constitutional provisions dealing with education are very few does not mean that CWDs right to exercise the right to education is limited. This is due to the reason that Ethiopia has ratified the major international human right instruments which specifically recognised the right to education of CWDs.

Incorporating international human rights law in constitutions allows access to a broader framework of rights and is a good addition to the non-discrimination framework.²⁴⁵ From the discussion held in chapter two of this thesis, one can infer that disability is well addressed in the CRC, ACRWC and CRPD to which Ethiopia is a member State. Article 45 (3) of the Constitution may, for instance, be juxtaposed with CRPD to read PWDs rights into the Constitution.²⁴⁶ Therefore, although the combined application of the above Constitutional provisions with that of various international and regional human rights instruments ratified by Ethiopia is paramount to guarantee the recognition of the right to education of CWDs under the Ethiopian legal system, it is easy to scrutinise how far those instruments are not effectively implemented yet. This idea will be elaborated in the next chapter.

3.4.2 The Civil Code of Ethiopia

The Civil Code is comprised of various civil rights of the people of Ethiopia. It deals with the right of PWDs under its different books. For instance, Article 2052(1) guarantees the right to education of CWDs indirectly by imposing duties upon parents and guardians to make sure that their child gets education. It reads as:

"A person commits an offence where he fails to take in respect of persons entrusted to his charge of supervision by law or inconformity with the law, measures of education and supervision which may reasonably be expected of him, having regard to the circumstance and custom"²⁴⁷

²⁴⁵ UNESCO (2007) (n 78 above) 40.

²⁴⁶ Yeshanew (n 215 above) 13.

²⁴⁷ The Ethiopian Civil Code, Proclamation No. 165 (1960), article 2052 (2) and (3).

So, the Civil Code of Ethiopia under this Article indirectly guarantees the right to education of CWDs by imposing duties upon parents and guardians to make sure that their child gets education.

Moreover the Civil Code on legal capacity also makes reference to insanity as a ground to limit legal capacity when the mental health of a person is questioned by the society he is living with or where a court passed a judgment of judicial interdiction. The law defines insane person as “one who cannot understand the importance of his actions as a result of being insufficiently developed, mental disease or senility.”²⁴⁸

The Civil Code was enacted four decades ago and has not been harmonised with the current notion of the rights of PWDs and contains provisions that lack conformity with relevant international standards, which has a negative impact on the protection of the rights of PWDs.²⁴⁹

3.4.3 The Revised Family Code of Ethiopia

The Revised Family Code of the Federal Democratic Republic of Ethiopia deals about education under Article 260 that reads as:

"The guardian shall ensure that the minor be given general education or professional training commensurate with his age and ability."

Similar to the Civil Code, this Article also obliges parents or guardians to ensure whether a minor under their custody gets education or professional training that fit his/her age and ability. This Article is particularly significant to CWDs as some parents may not know that CWDs have the right to education. In addition those who already know may hide them fearing social stigma. Thus this provision puts pressure on parents and guardians to make sure CWDs under their care have access to education.

²⁴⁸ As above, article 339(1).

²⁴⁹ For instance a person with visual impairment can have a permanent sign or a mark for his or her identification. However, in Ethiopia, in every bank transaction a visually impaired person is obliged to bring a sighted person who has an identification card with them and to give a thumb print as their signature. This is not clearly indicated as compulsory in the Civil Code but bank officials are using the provision of the Civil Code, which states that the signature of thumb mark of a person with visual impairment or illiterate person shall not bind him unless it is authenticated by a notary, registrar or judge acting in the discharge of his duties.

3.4.4 Ethiopian Building Proclamation (No 624/2009)

In order to ensure public health and safety, the government of Ethiopia promulgated Ethiopian Building Proclamation No. 624/2009 that determines a minimum national standard for the construction or modification of buildings or alteration services.²⁵⁰ Proclamation No.624/2009 is a starting point for the promotion of accessible environment in the Country. It contains a specific provision dealing with facilities for physically impaired persons and makes it mandatory for public buildings to be physically accessible for PWDs.²⁵¹ Violation of this Proclamation will be accompanied by penalties and fines as well as demolition of the structure.²⁵²

The CRPD recognizes ‘universal design’ to be used by all for the purpose of designing products, environments programmes as well as services.²⁵³ But where the need for specialised design emerges, the design shall also include special design. In particular to accessibility, the CRPD requires State Parties to take appropriate measures which includes identifying and eliminating obstacles and barriers to accessibility of PWDs in the Country.²⁵⁴ Specific to physical environment, States are expected to promulgate and monitor the implementation of minimum standards and guidelines.²⁵⁵

However the term universal design has not yet received an official or legislative definition in Ethiopia. It should, however, be noted that its element has been introduced in the Proclamation No, 624/2009 that requires that all buildings meet the criterion of accessibility at the initial level of construction.²⁵⁶ It is a positive feature of the government of Ethiopia to issue such Proclamation which requires accessibility of PWDs after the CRPD was signed and it can be argued that this Proclamation is impacted by the CRPD.

Unfortunately the Proclamation No.624/2009 does not have retroactive effect on buildings which are completed on or before the effective date of the Proclamation and on buildings that are under construction with a building permit issued before the effective date of this Proclamation.²⁵⁷ In

²⁵⁰ The Federal Democratic Republic of Ethiopia, Ethiopian Building Proclamation, Proclamation No. 624/2008, Preamble.

²⁵¹ As above, art 36.

²⁵² As above.

²⁵³ CRPD, art 2 and 4(1) (f).

²⁵⁴ CRPD, art 9.

²⁵⁵ CRPD, art 9.

²⁵⁶ Federal Democratic Republic of Ethiopia *An Initial Treaty-specific Report on the Implementation of Convention on the Right of Persons with Disabilities (CRPD)* (2012) part two, 3.

²⁵⁷ Ethiopian Building Proclamation No. 624/2008, art 3(2).

addition, the Proclamation will not be applicable in buildings that are exempted by the decision of the Council of Ministers for reasons related with national security and other purposes.²⁵⁸

The non-retroactive effect of the Proclamation creates a gap. When reading Article 4 of the CRPD in conjunction with Article 9, it can be understood the extent of State Parties obligation to physical environment accessibility which is eliminating any obstacles which hinders PWDs movement equally with others. Hence, Ethiopia is obliged to make the inaccessible buildings built before Proclamation 648/2008 accessible but due to the non-retroactive effect of the Proclamation, this is not an option. This will negatively affect the right to education of CWDs as the proclamation won't have any legal effect on inaccessible schools built on or before the effective date of the proclamation.

3.4.5 FDRE Proclamation No 691/2010

Previously, in Ethiopia, there was a trend by most of the executive organs to leave disability issues to the Ministry of Labour and Social Affairs (MOLSA) which is the responsible ministry on disability.²⁵⁹ But the Proclamation No.691/2010 which defines the powers and functions of the various executive organs brought an important legal tradition in addressing disability in development.

Article 10 of the Proclamation states common powers and responsibilities of all the ministries. The Proclamation specific to disability requires every ministry to create conducive conditions for PWDs, equal opportunities and full participation within their respective area of competence. For the proper implementation of the CRPD in the Country, integration of disability matters in every line Ministry is essential which Proclamation 691/2010 ensures.

As such, the education of CWDs in Ethiopia will fall under the Ministry of Education of the country. This is in line with the goal of inclusion which is that education of all children, including those with disabilities, should be under the responsibility of the education ministries or their equivalent, with common rules and procedures. As discussed in chapter two of this thesis,²⁶⁰ the CRPD requires states parties to establish national mechanisms, including focal points but the paradigm shift endorsed by the Convention on the understanding of disability,

²⁵⁸ As above.

²⁵⁹ Federal Democratic Republic of Ethiopia *An Initial Treaty-specific Report on the Implementation of Convention on the Right of Persons with Disabilities (CRPD)* (2012) part two, 3

²⁶⁰ See chapter two, section 2.5.3, para 2 of this thesis.

away from medical and social understanding to one of human rights, needs to be reflected in the choice of focal point. The previous trend Ethiopia used to follow; designating the MOLSA for issues of disability reflects the cultural perception that CWDs are in need of welfare rather than equality of opportunity. This particular model tends to further segregate CWDs, and shifts the focus from education and achieving social and economic inclusion to treatment and social isolation.²⁶¹ Luckily Proclamation 691/2010 replaces this trend and requires every ministry to create conducive conditions for PWDs, equal opportunities and full participation within their respective area of competence.

3.5 Policy Framework

In Ethiopia there are policy and programme documents pertaining to education in general and education of CWDs in particular. Of the various policy and program documents adopted by the federal government, the major ones which are relevant to the education of CWDs are; the Education and Training Policy (1994), Education Sector Development Program (ESDP), Developmental Social Welfare Policy (1997), National Programme of Action for rehabilitation of Persons with Disabilities (1999), National Plan of Action of Persons with Disabilities (2012-2021), the 2006 Special Needs Education Strategic Programme, Growth and Transformation Plan (2010/11 – 2014/15). These policies and programs pertinent to the education of CWDs in Ethiopia will be discussed below.

3.5.1 The ETP (1994)

Responding to the challenges of the education system of the late 1980s and early 1990s and based on the declarations of the Constitution, the government designed the ETP of 1994, which intends to systematically and gradually alleviate educational problems.²⁶² The ETP has focused on expanding access to educational opportunities and requires expansion of basic quality education and training for all, and the development of physical and mental potential and problem-solving capacity of individuals including those of children and youth with special needs.²⁶³

²⁶¹ WHO (2011) 214.

²⁶² Prospects, Challenges and policy options of Ethiopian Educational System towards the Achievement of EFA Goals 7. <http://home.hiroshima-u.ac.jp/cice/e-forum/paper67.pdf> (accessed on 26 August 2012).

²⁶³ Federal Democratic Republic Government of Ethiopia (FDRE) *Education and Training Policy* (1994) section 2.1.1.

In terms of education, despite its outdated language the ETP states as one of its objectives “to enable both the handicapped and the gifted learn in accordance with their potential and needs”²⁶⁴ In this case, it doesn't provide a clear guideline as to which mode of educational delivery would be followed to unfold the potentials of CWDs.²⁶⁵ Under section 3.7.6, the policy makes a further incidental statement that: special attention will be given in the preparation and utilisation of support input for special education.²⁶⁶ Besides that section, no other one focuses on PWDs specifically. Therefore, Lewis states that the ETP lacks accuracy and detail. However, UNESCO (2007) argues that the ETP indirectly focuses on the implementation of inclusive education and the need for special support for vulnerable groups.

3.5.2 The Developmental Social Welfare Policy (1997)

The Developmental Social Welfare Policy, adopted in 1997, specifically targets PWDs and sets out to safeguard their rights and to promote opportunities for vocational rehabilitation.²⁶⁷ The Policy has set out specific areas where efforts for enhancing opportunities to PWDs should be directed at.²⁶⁸ These include increasing education, skill training and other services and adoption of appropriate legislations with a view to ensure the welfare of PWDs.²⁶⁹ The strategies prescribed for this include creating an accessible physical environment, promoting positive attitudes towards disability, and assisting action groups and NGOs working on the issue and providing services to PWDs.²⁷⁰ However, how far the recommendation is put in to effect is questionable and will be discussed in the next chapter.

3.5.3 The National Program of Action for the Rehabilitation of Persons with Disabilities (1999)

In 1999, MOLSA designed a National Program of Action for the Rehabilitation of Persons with Disabilities that aims to operationalise the UN Standard Rules on Equalisation of Opportunities

²⁶⁴ As above, section 2.2.3.

²⁶⁵ Tirussew, T. 'Inclusion of Children with Disabilities in Regular Schools: Challenges and Opportunities' *The Ethiopian Journal of Education* Vol. XIX No.1 50 (1999).

²⁶⁶ FDRE *Education and Training Policy* (1994) section 3.7.6.

²⁶⁷ Ministry of Labour and Social Affairs (MOLSA) *The Developmental Social Welfare Policy* (1996) art 5(6)(1).

²⁶⁸ As above.

²⁶⁹ Creating ways to provide for persons with disabilities appropriate support services and supportive appliances, launching appropriate and sustainable educational programs and awareness- raising campaigns to significantly raise the level of public awareness concerning the determinants and consequences of the problems of physical and mental disability as well as change prevailing harmful traditional attitudes, norms and practices in respect to persons with physical and mental impairment: see MOLSA *The Developmental Social Welfare Policy* (1996) art 5(6)(9).

²⁷⁰ As above, art 5(6)(9).

for Persons with Disabilities and the Developmental Social Welfare Policy of Ethiopia.²⁷¹ The major objectives of the Program are; taking disability prevention measure by promoting community participation, enabling PWDs to achieve a better standard of living by building their capacity and ensuring equal rights of PWDs and their full participation in society.²⁷²

The areas of focus identified in the program are prevention of disability, educational rehabilitation, accessibility and awareness-raising, among others.²⁷³ However, the program does not provide for a timetable for the implementation of these activities making it difficult to monitor progress. Thus the implementation of the Developmental Social Welfare Policy and the National Program of Action for the Rehabilitation of Persons with Disabilities remains a challenge.

In both policies, the Developmental Social Welfare Policy and the National Plan of Action 1999, disability is addressed from a rehabilitation, social welfare and charity-based standpoint, which makes these policy papers obsolete in view of the above mentioned current models of disability.²⁷⁴ Furthermore, no mention is made to show the involvement of PWDs and DPOs in the preparation of these policies, none of which were sufficiently consulted by the Ministry during the policy formulation process.²⁷⁵

3.5.4 Special Needs Education in the Education Sector Development Program (ESDP)

The right to education of the child falls within the context of the Education Sector Development Plan (ESDP) of Ethiopia. Thus a summary of the objectives and content of the ESDP will provide background to the review.

²⁷¹ Ministry of Labour and Social Affairs (MOLSA) *National Programme of Action for Rehabilitation of Persons with disabilities* (1999) [hereinafter referred to as NPA (1999)].

²⁷² As above.

²⁷³ Medical rehabilitation, vocational rehabilitation and employment services, strengthening and expanding organisation's of persons with disabilities, religion, culture, sport, recreation and family life are also other areas of focus identified in the Program Action.

²⁷⁴ Dagnachew Bogale Wakenè 'The Role of Disability Rights Movement in the Ethiopian Development Agenda' Unpublished LLM thesis University of Stellenbosch (2011) 18.

²⁷⁵ As above; emerging issues and priorities such as the legal framework related to the CRPDs among others required the National Programme of Action of 1999 to be revised. On top of that the National Plan of Action 1999 had no time frame and the necessary budget for its implementation. As a result, MOLSA has decided to prepare a replacement "National Plan of Action of Persons with Disabilities, 2012-2021" (NPA) to guide National and Regional efforts to provide comprehensive rehabilitation and other services to improve the situation of persons with disabilities in the country and ensure their full and equal participation in the life of their families, communities and the nation: see The Federal Democratic Republic of Ethiopia; Ministry of Labour and Social Affairs, *National Plan of Action of Persons with Disabilities (2012 – 2021)*[hereinafter referred to us NPA (2012-2021)] into para 3 (this document will be discussed in section 3.5.3).

The Government of Ethiopia launched a twenty-year education sector indicative plan to implement the 1994 national Education and Training Policy. The main goal of the plan is to improve educational quality, equity, and relevance with special emphasis on primary education for all by 2015.²⁷⁶ The ESDP I that outlined implementation of the policy was prepared for the period 1996-2001. It was followed by the second ESDP plan. Both of these plans promoted universal primary education, quality of education and equity.²⁷⁷ However they interpreted equity as referring only to gender balance, providing education in rural and urban environments, and distribution of schools in all regions.²⁷⁸

Special needs education (SNE) is incorporated in the third Education Sector Development Program (for the period 2005/06-2010/11) as one of the “crosscutting issues”,²⁷⁹ and is extended to regional and local action plans to minimise the budget barriers in the implementation of the strategy processes towards inclusive education.²⁸⁰ The national aim is that by 2015 all children will successfully complete eight years of primary schooling, in line with the Millennium Development Goals (MDGs) and the international Education for All (EFA) targets.²⁸¹

Regrettably, there is no mention of CWDs or special needs education in the explanation of the overall strategy under the ESDP III.²⁸² Disability is not mentioned in the ESDP’s education situation analysis either. The document focuses on equity, but presents this in terms of gender equity.²⁸³ It mentions the importance of special needs education for people who require it.²⁸⁴ However, nothing is said about students with learning and physical disabilities. It does, however, state that “the Government attaches greater importance to the expansion of educational opportunities to children with special needs”.²⁸⁵

²⁷⁶ MOLSA NPA (2012-2021) section 4.3.

²⁷⁷ The Federal Democratic Republic of Ethiopia, Ministry of Education (MOE) *Education Sector Development Program III (ESDP-III) 2005/2006 –2010/2011, Program Action Plan* (2005) art (2) section 2.9.1.

²⁷⁸ As above.

²⁷⁹ As above.

²⁸⁰ As above.

²⁸¹ As above, art (2) section 1.1.

²⁸² As above, art (2) section 4.8.1; although gender features, as do those affected by food insecurity, and illiterate adults.

²⁸³ As above.

²⁸⁴ As above, art (2) section 9.2.

²⁸⁵ AS above, 62.

Currently, Education Sector Development Program IV 2010/11 – 2014/15 (ESDP IV) (2010) is in force, which replaced ESDP III (2005).²⁸⁶ In this most recent Program, the government recognises the misconceptions and negative attitudes towards PWDs throughout society. Further, barriers to education are enumerated, including lack of knowledge, bad teaching methods and lack of adequate assessment procedures. In order to overcome these barriers, to increase the limited number of PWDs enrolled in education and to achieve the Education for All (EFA) goals Ethiopia has integrated disability inclusion in ESDP IV, in contrast to the first three education policies. However, two of the three action points of the Program that focus on disability, are directed to the combination of gender and disability.²⁸⁷

Further, the Government of Ethiopia has developed the General Education Quality Improvements Package (GEQIP) to improve the quality of education and to mainstream vulnerable groups. The objectives of the Package are the improvement of curricula and textbooks, the conversion of assessment practices, progress of teacher qualifications, training in management and encourage schools to manage their resources.²⁸⁸ In other words, inclusive education is promoted in some of the objectives of the GEQIP.

3.5.5 Special Needs Education Strategic Programme (2006)

In 2005, Ethiopia launched its SNE strategy, with a view to facilitate the education of CWDs into the ESDP III and achieve universal primary education, one of the 2015 millennium development goals.²⁸⁹ The SNE Programme Strategy issued in 2006 is the most comprehensive of all policy documents relating to education of CWDs that the country has to date. The strategy aims at

²⁸⁶ According to ESDP IV, the new program is developed to continue the work done under ESDP III, to realize a long-term vision and to address the remaining goals: MOE (2010) chapter 2.

²⁸⁷ These policy issues are the spread of policies that address female students with a disability and the equipment of teachers with knowledge and awareness about gender issues, with emphasis on gender and disability, through workshops and promotion materials. Disability is also mentioned in the action point about the development of norms and codes about the required number of students with a disability. . According to the Ministry, many measures are yet taken to improve the accessibility and quality of inclusive education, including the establishment of new teacher education programs on special needs education, the modification of several curricula, the opening of many Special Needs Education departments and the provision of sign language trainings: MOE (2010).

²⁸⁸ According to this initiative, textbooks have to promote inclusive learning, teachers are obliged to follow special education trainings, management trainings require inclusive issues and awareness has to be raised through forums and other activities for parents and students. The strategy is recognised as one component of the third Education Sector Development Program ESDP III. This package has come to reality after a strong advocacy and promoting works: Leonard Cheshire Disability/UNECA 'UN Convention on the Rights of Persons with Disabilities: a call for action on poverty, discrimination and lack of access' (2008).

²⁸⁹ MOE (2006) (n 40 above) preface para 1.

ensuring both access and quality of education for all children, including children with special educational needs.²⁹⁰

Although the Programme Strategy does not mention CWDs specifically in its strategic aims, it talks almost exclusively about CWDs in its discussion of strategic priorities.²⁹¹ It acknowledges the fact that the needs of CWDs can be met in ordinary schools along “inclusive lines” listing organized schools and appropriately trained teachers as prerequisites.²⁹² Furthermore identification procedures, support systems and availability of appropriate materials and equipment in schools and in the community are listed as basics for inclusive education to take place.²⁹³

The use of special schools and segregated units and classes in mainstream schools receives significant impetus through the Ethiopia SNE Program Strategy. For instance, it states that funds should be found or allocated to “strengthen the capacity of the existing special schools, units and classes [and] promote their expansion”.²⁹⁴ However, it also calls for education officials and school management to be educated on “organising inclusive schools to meet diverse needs in the mainstream classrooms”.²⁹⁵ The Strategy further encourages the development of cluster schools and itinerant teachers to support staff working in both the regular classes and the special units/classes.²⁹⁶

The strategy document doesn't mention how the education of CWDs will be funded. This is perhaps the most important gap of the document, given that a finance model for SNE is one of the most important and complex of subjects. Further, the education of CWDs has not been a

²⁹⁰ As above.

²⁹¹ As above, section 3.2.

²⁹² As above.

²⁹³ One of the several priorities identified in the SNE Strategy is including SNE in national and regional education sector planning and reporting systems at early childhood primary, secondary, technical, vocational and higher educational levels. . Secondly, developing guidelines and providing technical assistance to regions and strengthening the capacity of the education system

²⁹⁴ MOE (2006) (n 40 above) 22.

²⁹⁵ As above, 24.

²⁹⁶ The document provides a figure to show how mainstream schools; cluster schools, itinerant teachers, special units/classes and special schools will work together: MOE (2006) figure 3, 27.

major focus of the Government budget, mainly due to dire lack of financial resources. For instance, the budget allocated for SNE in the ESDP III for the 2005/06-2009/10 period is Birr 5 million, a small percentage of the total estimated cost of implementation of ESDP III of Birr 53.9 billion.²⁹⁷

The key education policies and plans reviewed in this chapter were prepared before the UN Convention on the Rights of Persons with Disabilities was finalised at the end of 2006. However, given that Ethiopia's SNE Program Strategy was prepared at a time when the new Convention was being debated, it is perhaps oblivious that it does not mention the Convention, even as a forthcoming document.

3.5.6 National Plan of Action of Persons with Disabilities (2012-2021)

A National Plan of Action of Persons with Disabilities (NPA) has been adopted by MOLSA which will be implemented from 2012 – 2021. The NPA was developed in consultation with key Government institutions, PWDs, parents of children with disabilities, DPOs and civil societies unlike the previous National Plan of Action (1999). International instruments including the CRPD, regional documents as well as national legislations were the basis of NPA. The NPA considered the eight basic principles of the CRPD²⁹⁸ to be a framework for all the actions.

The NPA defines disability in accordance with the CRPD and includes

“those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others”

The NPA incorporates the twin track approach and includes both mainstream and disability-specific actions.²⁹⁹ Thus one track focuses on mainstream programs and services which are not specifically designed for PWDs such as ordinary schools.³⁰⁰ The other track focuses on disability-specific programs and service provision required to address the individual needs of

²⁹⁷ MOE (2005) 68.

²⁹⁸ CRPD, art 3.

²⁹⁹ MOLSA NPA (2012-2021) (n 244 above) section 2.2 (a).

³⁰⁰ As above.

PWDs, such as special schools. The NPA notes that neither track is better or more important than the other; both are required to ensure that needs of children, youth and adults with disabilities are met, and to provide for equality of opportunity and full participation.³⁰¹

Recalling that disability is a cross cutting issue in the country's poverty reduction plan and each Federal Ministries and Agencies are responsible to include disability in their respective sectoral developmental plan, the NPA identified list of priorities. Each priority area has its own objective, output, activities and indicators. Among others, education and training and international cooperation are the priority areas identified.³⁰²

The general principles of the Convention mainly full participation which are the base of the NPA and the rights recognised by the Convention which becomes priorities of the NPA are showcasing how the CRPD is reflected in the NPA. This comprehensive national plan of action of PWDs for the Country is one of the great achievements that Ethiopia could report to the Committee on the Rights of Persons with Disabilities. With the existence of the legislations and policies discussed above and the Growth and Transformation Plan (which will be discussed next) which demands Federal Ministries and Agencies to incorporate disability matters in their respective developmental plan, the NPA ensures the promotion and protection of the rights to education of CWDs.

3.5.7 Growth and Transformation Plan (2010/11 - 2014/15)

Poverty is a major problem in Ethiopia, affecting approximately 95 percent of its population.³⁰³

In the past, the Ministry of Finance and Economic Development (MOFED) has developed several plans to reduce poverty.³⁰⁴ The PRSP was called the Sustainable Development and

³⁰¹ As above.

³⁰² To that end, the NPA aims, inter alia, to increase the number of children with disabilities enrolled in ordinary primary, secondary and higher education by 70%. On the other hand, the NPA plans to undertake a study in order to expand special schools for blind/visually impaired and deaf/hearing impaired students in the country. The NPA aims to expand SNE and inclusive education for children with disabilities included in all national and regional education sector development plans, budgets and reporting. Moreover the NPA plans to strengthen and expand SNE teacher education training among the major universities in the regions, to identify, share and publicly recognize good examples of SNE and inclusive education practice. NPA, chapter 2.; sec. 2.3.4 objective 4.

³⁰³ USAID 'Ethiopia Disability Inclusion Strategy 2011-2015' (2011).

³⁰⁴ Federal Democratic Republic of Ethiopia (FDRE) Ministry of Finance and Economic Development (MOFED) *The Sustainable Development and Poverty Reduction Program (SDPRP)* (2002).

Poverty Reduction Strategy Paper and was launched in 2002.³⁰⁵ In this PRSP, some attention is given to special needs education with a primary focus on learners with disability.³⁰⁶ In her critique of the country's law and policy environment surrounding disability, Lewis spots apparently contradictory statements in the 2002 document, when it states that “to expand the SNE programmes, integrated approaches will be designed for students with special needs” and then goes on to discuss actions that focus on segregation (constructing new schools and classes for children with special needs) rather than on integration or inclusion.³⁰⁷

The second strategy plan was the Plan of Action for Sustainable Development to End Poverty for the period of 2005 to 2010. The 2006 Plan for Accelerated and Sustained development to end Poverty primarily reiterates details from ESDP III, but is more incidental in its mention of education for learners with disabilities than the 2002 Sustainable development and Poverty reduction Programme.³⁰⁸ In these two PRSPs, disability is not specifically mentioned. Only some generalised terms as ‘*vulnerable groups*’ are used. Much more attention is given to children, gender and youth.³⁰⁹ The absence of the mention of disability in the first Poverty Reduction Strategy Plans (PRSPs) shows the limited involvement of disabled people in the development of these Plans.³¹⁰

Currently, the third poverty reduction named Growth and Transformation Plan (GTP) 2011-2015 is in force. The GTP has considered disability as a cross cutting issue for the first time.³¹¹ Creating equal opportunities and protecting PWDs rights are the two main reasons the GTP included disability as a cross cutting matter.³¹² Frequently, the Social Welfare Chapter (8.3) focuses on PWDs. The emphasis in social development lies in the enablement of PWDs to use their abilities in an equal way as persons without a disability.³¹³ Strategies used to reach social

³⁰⁵ Wakenè (n 274 above).

³⁰⁶ Lewis

³⁰⁷ As above, 22.

³⁰⁸ Federal Democratic Republic of Ethiopia (FDRE) Ethiopian Ministry of Finance and Economic Development (MOFED) *A Plan for Accelerated and Sustained Development to End Poverty (PASDEP)* (2006).

³⁰⁹ Dutch Coalition on Disability and Development (2012).

³¹⁰ Wakene (n 274 above).

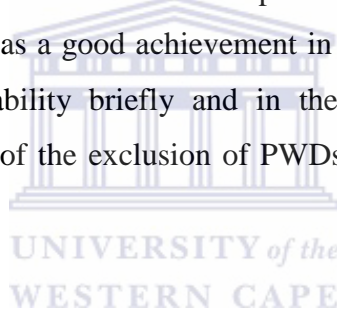
³¹¹ See The Federal Democratic Republic of Ethiopia (FDRE) Ministry of Finance and Economic Development (MOFED) *Growth and Transformation Plan (2010/2011 – 2014/2015)* [hereinafter referred to as GTP] Chapter 8.

³¹² As above.

³¹³ GTP, section 8.3.1.

and economic development of the country, are enumerated in chapter 8.3.3 of the GTP. The strategies include the facilitation of special needs education, the empowerment of PWDs, prevention of barriers in mobility for PWDs and the supply of assistive devices. Further, strategies are the implementation and improvement of rehabilitation and vocational training services and the awareness-raising through education and other information services.³¹⁴

One of the shortcomings of the GTP is that it treats disability and PWDs solely as ‘welfare cases’ juxtaposed with issues of the elderly in the society.³¹⁵ Another visible shortcoming is that the specific differences between disability and the issue of the elderly should have been delineated satisfactorily, should the two issues be placed together in the first place.³¹⁶ Admittedly, however, the points included in this document do try to adhere to contemporary beliefs about disability; namely, the social and human-rights based outlooks explained earlier in this thesis.³¹⁷ According to Wakanè the GTP is considered as a good achievement in the inclusion of PWDs, despite the fact that the GTP mentions disability briefly and in the Social Welfare Section alone.³¹⁸ Probably, this is the consequence of the exclusion of PWDs from the preparation phase of the Plan.³¹⁹



It must be stressed that the above section outlines the respective governments’ wishes or intention with regards to implementation – it does not mean that these approaches and activities are actually happening.

Therefore, from the above discussions it can be concluded that Ethiopia’s existing legislative and policy frameworks are inadequate and do not fully comply with the international standards to be able to ensure the realisation of the right to education of CWDs. Furthermore the frameworks are still embedded in the ‘medical’ and ‘charity’ models and do not emphasise inclusive education.

³¹⁴ As above.

³¹⁵ As above

³¹⁶ As above, 30.

³¹⁷ As above, section 2.2: *The Concept, History and Emergence of the DRM*.

³¹⁸ Wakene (n 274 above).

³¹⁹ See The Federal Democratic Republic of Ethiopia (FDRE) Ministry of Finance and Economic Development (MOFED) *Growth and Transformation Plan (2010/2011 – 2014/2015)* [hereinafter referred to as GTP] Chapter 8.

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CHAPTER FOUR

CHALLENGES TO INCLUSIVE EDUCATION FOR CHILDREN WITH DISABILITIES IN ETHIOPIA

4.1 Introduction

The right to education is both one of the most important right for CWDs and the right most frequently denied³²⁰, owing to many factors.³²¹ It is beyond doubt that across the world many children do not have access to education, including large numbers who have disabilities.³²² This is despite the fact that it is now more than 60 years since the nations of the world, speaking through the UDHR³²³ asserted that ‘everyone has a right to education’.³²⁴

The right to education of CWDs has been clearly discussed in chapter two of this thesis³²⁵ with specific reference to the CRC. The CRC expressly prohibits discrimination on the basis of disability and clearly expresses the right of each child to education.³²⁶ The CRC is in turn reinforced by the CRPD, which places an obligation on governments to ensure an inclusive system.³²⁷ In addition to the CRC and the CPRD, ACRWC unequivocally affirms that “*Every child shall have the right to an education*”.³²⁸

Thus, as a signatory to all the above instruments,³²⁹ Ethiopia has undertaken to comply with the obligations enunciated therein which are applicable to CWDs, too.³³⁰ Especially, the ratification

³²⁰ Kilkelly (n 47 above) 199; Verheyde (n 123 above) 44.

³²¹ In many countries, children with disabilities are considered to be incapable of learning, no matter what their disability. There is also little perception by their families or their society that they will need any education. Moreover, they are usually considered to be embarrassment (evidence of bad blood, incest or divine dis-favour) and should not be seen regularly in public. Such kind of factors facilitated denial of education to such children: see UNICEF ‘Inter-Divisional Working Group on Young People, An overview of young people living with disabilities: Their needs and rights’ (1999) 1.

³²² Mel Ainscow, N.K Jangira and Anupam Ahuja ‘Education: responding to special needs through teacher development’ *in Disabled children and Developing Countries* (1995) 131.

³²³ Adopted by the UN General Assembly resolution 217 A (III) on 10 December 1948.

³²⁴ UDHR, art 26(1).

³²⁵ See chapter two of this thesis.

³²⁶ CRC, art 28; the CRC also stipulates the responsibility of governments to ensure that children with disabilities receive quality education in art 23.

³²⁷ CRPD art 24; it also highlights the role of international cooperation in helping governments meet their responsibilities in art 32.

³²⁸ ACRWC, art 11.

³²⁹ Ethiopia has ratified the CRC, ACRWC and CRPD. Refer to chapter one, section 1.1 of this thesis.

³³⁰ Ethiopia has ratified the CRC on the 14th of May 1991.

http://treaties.un.org/pages/viewdetails.aspx?src=treaty&mtdsg_no=iv-11&chapter=4&lang=en (accessed on 22 April 2013); ILO (2008); (UN 2012). Ethiopia is a State Party to the ACRWC which was ratified on October 2nd 2002: See African Commission on Human and Peoples’ Rights.

of the CRPD³³¹ imposes direct obligations to act towards the full and effective participation of CWDs guaranteeing equality both substantively and procedurally.

As education is a basic human right of CWDs, Ethiopia has also recognised the right to education of everyone including CWDs under domestic laws, Education Policy, Strategies and Programs as discussed in chapter three of this thesis.³³² Therefore, to explore the barriers that impede CWDs from actually enjoying their right to education in accordance with the above mentioned national, regional and international standards, the following section deals with the challenges CWDs face to access inclusive education in Ethiopia. .

4.2 Challenges and Opportunities for Inclusive Education for Children with Disabilities in Ethiopia

In Ethiopia, similar to many other countries the practice of the right for education, the right to equality of opportunity and the right for participation of CWDs in society are very limited.³³³ This is apparent in the data collected by the Ministry of Education in 2008/09 which estimated that 1.5 to 3 million children of school age in Ethiopia have special educational needs and currently less than 1% are attending school.³³⁴ The data further puts the total number of students with special educational needs enrolled in primary education (Grade 1-8) around 41,509 which is insignificant when compared to the number of school age children in Ethiopia with special need (1.5 to 3 million).³³⁵ Coupled with the problem that primary education is still neither free nor compulsory,³³⁶ which is an immediate obligation of the State,³³⁷ implementation of the right is far from reality.³³⁸

<http://www.achpr.org/instruments/child/ratification/> (accessed on April 2013).

³³¹ Ethiopia has ratified the CRPD on July the 7th 2010 but not the Optional Protocol of 2006 on considerations of communications from or on behalf of individuals or groups of individuals.

³³² Refer to chapter three of this thesis.

³³³ Etenesh Agegnehu 'Inclusion of Children with Disabilities : situational analysis of Ethiopia' (2002) Presented at International Special Education Congress (2000).

http://www.isec2000.org.uk/abstracts/papers_a/agegnehu_1.htm (accessed on 29 December 2012).

³³⁴ MOE (2006).

³³⁵ As above, 6; the strategy says there are about 3 million children in Ethiopia that need special education due to disability, learning problems and special gift. It is not clear whether children with 'special gifts' are considered as children with disabilities or not. They are simply mentioned as those that need special education due to the disabling milieu they have to face similar to those children that have disabilities.

³³⁶ United Nations Economic and Social Council, Committee on Economic, Social, and Cultural Rights, Forty eighth session, 30 April-18 May 2012, Concluding observations, Ethiopia, para. 26; see also Committee on the Rights of the Child, Forty-third session, Concluding Observations: Ethiopia, CRC/C/ETH/CO/3, 1 November 2006, para. 63. Note that making primary education compulsory, free and available for all is a right that is capable of creating obligation of immediate effect.

This often leads disability proponents to refer to the situation of children in Ethiopia as bleak.³³⁹ The scope and extent of this exclusion from education is simply intolerable and raises enormous concern. It is also a clear indication of the unavailability and inaccessibility of schools for the majority of CWDs.

Addressing inclusive education to CWDs requires overcoming potential barriers to inclusion in education. Handicap International describes PWDs' barriers to exercising their rights as being influenced by three factors: attitude (including culture and religion); environment (physical inaccessibility); and institutional (legal) discrimination.³⁴⁰ Perhaps, CWDs in Ethiopia face all three sub-discriminations, with disability linked to social and familial rejection, lack of education and feelings of shame. CWDs are seen as unproductive burdens on the family, and traditional beliefs prevail that disability is the consequence of a curse or wrong-doing committed by the family.³⁴¹

Therefore the next section will critically analyse the legal/institutional, attitudinal and environmental barriers to inclusive education of CWDs in Ethiopia with reference to international and national obligations. The first section commences with the attitudinal barrier followed by the legal and environmental challenges that CWDs have to face to access inclusive education. Lack of resources will be discussed as one of the challenges impeding CWDs from fully enjoying their right to education in Ethiopia. Last but not least, credibility of existing data and statistics in relation to the prevalence of disability and the number of children with special needs education in Ethiopia will be analysed.

4.2.1 Attitudinal Challenges

Attitudinal barriers usually arise from negative societal beliefs about the worth of CWDs. Attitudes of family and community members in particular and the public in general play crucial role in either creating access to services or posing barriers to services.³⁴² Thus a CWD's access

³³⁷ Verheyde (n 123 above) paras. 7, 14 and 42, pp. 10, 21, 54-55.

³³⁸ The Committee on the Rights of the Child raised its concern that Ethiopian CWDs have insufficient educational opportunities; and noting a double disadvantage for those who live in rural and remote areas. Committee on the Rights of the Child, *Consideration of Reports submitted by States Parties under article 44 of the Convention, Concluding observation: Ethiopia*, CRC/C/ETH/CO/3, 1 November 2006, para. 51.

³³⁹ The African Child Policy Forum (ACPF) *Children with Disabilities in Ethiopia: The hidden reality* (2011)IV.

³⁴⁰ As above.

³⁴¹ MOE (2006) 4.

³⁴² The African Child Policy Forum (ACPF) *Children with Disabilities in Ethiopia: The hidden reality* (2011)29.

to education is not only determined by the availability and physical accessibility of the services but also, to a larger extent, by the prevailing attitudes towards disability and CWDs and the level of awareness of the children and their caretakers of their right to access education.³⁴³ Therefore, the discussion of access to education for CWDs in Ethiopia will not be complete unless it is contextualised vis a vis the prevailing attitude and level of awareness in the country.

According to Article 8 of the CRPD Ethiopia has an obligation to adopt immediate, effective and appropriate measures to

“raise awareness throughout society, including at the family level, regarding persons with disabilities, and to foster respect for the rights and dignity of persons with disabilities”³⁴⁴

However, in Ethiopia, PWDs have for a long time been viewed as objects of charity, devoid of rights, equality and dignity.³⁴⁵ This is because there have been prevalent cultural beliefs in Ethiopia portraying disability as a direct consequence of curses, witchcraft and bad omens for a long time.³⁴⁶ Disability is frequently seen as a charity issue and there is minimal understanding of the social model of disability.³⁴⁷ These outdated cultural beliefs about the cause and nature of disability are still common mainly because knowledge about disability is weak.³⁴⁸

In Ethiopia besides poor physical access, the wider learning environment not being welcoming and accessible for CWDs, has been identified as the main reason for high grade repetition and number of CWDs not attending school.³⁴⁹ Most schools in the country hesitate to admit CWDs to the mainstream education. School administrations and teachers also lack the awareness that such children have the right to education.³⁵⁰

³⁴³ The African Child Policy Forum (ACPF) *The lives of children with disabilities in Africa: A glimpse into a hidden world* Addis Ababa: The African Child Policy Forum (2011) 35.

³⁴⁴ CRPD, art 8; also see CRPD Committee *Guidelines on treaty-specific document to be submitted by states parties under article 35, paragraph 1, of the Convention on the Rights of Persons with Disabilities* (UN Doc. CRPD/C/2/3, 2009).

³⁴⁵ Wakene(n 274 above).

³⁴⁶ Lakech Hailemariam, 'A Study on Gender and Disability: The Ethiopian Experience on Ensuring the Rights to Education for Women and Girls with Disabilities' (2006) 2.

<http://www.inclusionflagship.net/LakechHailemariam.pdf> (accessed on 25 December 2012).

³⁴⁷ The African Child Policy Forum (ACPF) *The lives of children with disabilities in Africa: A glimpse into a hidden world* Addis Ababa: The African Child Policy Forum (2011) 1.

³⁴⁸ Wakene (n 274 above).

³⁴⁹ The African Child Policy Forum (ACPF) *The lives of children with disabilities in Africa: A glimpse into a hidden world* Addis Ababa: The African Child Policy Forum (2011)35.

³⁵⁰ MOE (2006) 7.

The attitude of considering CWDs as incapable of self sufficiency is still widespread. Religious gatherings continue to promote the giving of alms to PWDs, prolonging the misconception that disability is a charity issue.³⁵¹ The misconceptions of causal attribution added to the misunderstandings of the capabilities of PWDs have resulted in a generally negative attitude and stereotyped discernment towards them.³⁵²

This is evident in a study conducted to explore the attitude of the general public to PWDs in Ethiopia which has come up with stereotyped, derogatory terms and figurative expressions commonly used in the Amahric language by the public. They are used to directly address PWDs or are figuratively used to express dissatisfaction or inability to perform tasks such involving cognitive, communication and motor skills. For instance, the hearing impaired were addressed as *Donkoro* and *Duda* (one who cannot understand and tongue-tied); the visually impaired as *Ewir*, *Denbara* and *Lebu Ende Ayenu Yetawere* (one who is disorganised and not bright), and those with motor impairments as *dewey* and *Komata* (highly disfigured or mutilated) and *Shibba*, *Ankassa Kulem* (curved or bent or lame). There were also derogatory terms identified to address children with mental retardation such as you with 44 devils *Gane Am* and *Likifit Am* (possessed by evil spirit), *Dedeb*, *Kilo* and *Fuzo* (one who cannot understand, stupid or mentally ill).³⁵³

These are misleading terms which wrongly characterise personalities and ill-define the abilities of PWDs. They are deeply embedded across the different cultural groups in the country.³⁵⁴ Thus far, some of these expressions are still not replaced by an up to date and acceptable disability-friendly terms and are still being used in the country.³⁵⁵ This approach of looking disability as a charity (medical) issue is playing exclusionary and debilitating role in the lives of persons (children) with disabilities and is contrary to the foundation of the CRPD which specifically

³⁵¹ Tirussew (2006) (n 11 above) 7.

³⁵² As above.

³⁵³ As above.

³⁵⁴ As above, 13.

³⁵⁵ Articles 340 and 1728 of the Ethiopian Civil Code contain degrading terminologies used to describe people with disabilities. chapter 3, Article 339 (1) of the code mentions the term *aemirowgodolo* – which literally means with an incomplete mind (an insane person) – and defines such a person as “one who, as a consequence of his being insufficiently developed, or as a consequence of mental disease, or of his senility, is not capable to understand the importance of his actions (or not conscious of what he does)”. Under article 339(2), the code goes on to equate the *feble-minded*, drunkards, or the habitually intoxicated, and persons who are prodigals with the mentally disabled : see Imperial Government of Ethiopia (1960) 58.

rejects the medical model of disability that views a PWD as a patient in need of treatment or charity³⁵⁶.

As such the discourse and negative attitudes towards CWDs affect their right to inclusive education since inclusive education requires their full social integration and development. Thus existing legislation and practices need to be given a second look to incorporate the social model by referring to disability as the result of the interaction between the person with impairment and external barriers in order for CWDs to be fully socially integrated and benefit from inclusive education. In addition, intensive effort is needed to raise awareness about the rights of CWDs in accordance with Article 8 of the CRPD.

In terms of parental attitude towards educating their CWDS, some parents strongly believe that their children are capable of reaching great heights if given proper support.³⁵⁷ Others are more ambivalent about education possibilities and they feel inferior and are mostly unhappy about their children's disability.³⁵⁸ Parents and other family members of CWDs, particularly from poor and uneducated families, often do not know that their children have the right to attend mainstream public schools and about their educational options. According to a report approximately 10% of parents of CWDs who never attended school did not want their child to go to school. The main reason for this is parent's wrong perception that their children are not capable of learning and their acceptance that their child should stay at home.³⁵⁹

To that end the CRPD Committee calls up on the States to take proactive measures to enhance awareness to develop policies and programs implemented to ensure elimination of stereotypes and to focus on the dignity, capabilities and contributions to society of PWDs.³⁶⁰ It also urges States to inform all PWDs, especially those living in rural areas, of their rights, specifically their

³⁵⁶ The African Child Policy Forum (ACPF) *Educating Children with Disabilities: Ethiopia* (2011)15.

³⁵⁷ As above, 21.

³⁵⁸ As above, 19-22. The birth of a child with a disability is often a source not only of needless finger pointing and bad-mouthing, but also of shame and exclusion for parents. In some circumstances, this might lead to hiding the child from public view, and relegating him or her to a life of virtual solitary confinement: Lakech (n 342 above) 2.

³⁵⁹ The African Child Policy Forum (ACPF) *The lives of children with disabilities in Africa: A glimpse into a hidden world* Addis Ababa: The African Child Policy Forum (2011) 34.

³⁶⁰ CRPD Committee Concluding Observations on Peru (Un Doc CRPD/C/PER/CO/1, 2012) para 19.

right to attend school. The Committee further recommends the introduction of awareness raising programme that shows the society positive perceptions of PWDs.³⁶¹

However in Ethiopia there has not been significant awareness raising measure taken. For example, in 2011 only 9000 people were targets of awareness raising campaigns and trainings throughout the country.³⁶² It was carried out mainly in major cities and the targets were representatives of DPOs, government agencies, officials from sector offices and some community leaders.³⁶³ Discrimination of CWDs manifests itself mainly within the society, especially in rural areas. Disability also remains an under-reported issue in the Ethiopian media, with many journalists uncomfortable about addressing this issue because of social taboos.³⁶⁴ Without raising awareness and disseminating relevant provisions of ratified human rights treaties for families, communities, sector offices, school administration and teachers at all levels, it is hard to expect the right to be achieved. It is also difficult for CWDs to claim their right and advocate about them unless they are aware of their rights.

To sum up, in Ethiopia, as a result of the negative attitudes and lack of awareness, CWDs are denied their right to education. This shows the intensive harm parent's and public's attitude towards CWDs can do to their access to education given the situation that these children may never leave home let alone go to school. Even if they managed to attend school their chance of succeeding would possibly be very low. This is a clear indication of the Government's failure to take effective and immediate measures to promote awareness of the capabilities and contribution of PWDs as stated in Article 8 (1) (C) of the CPRD. It is thus vital to change those attitudes and environments that make it difficult for CWDs to participate fully in society for Ethiopia to discharge its obligation in accordance with the CRPD.

The good news is that the overall public attitude is slowly changing in the country for the good: Ethiopia now has parliamentarians with disabilities who are playing crucial leadership roles in

³⁶¹ As above.

³⁶² See *Internews: Local Voices, Global Change* <http://www.internews.org/our-stories/program-news/disability-and-hiv-discussed-internews-journalism-roundtable-ethiopia> (accessed on 4 May 2013).

³⁶³ It is noted that lack of focal points in sector offices, which could follow up special needs/inclusive education and its implementation, around the country is the main reason not to reach out a wider area.

³⁶⁴ See *Internews: Local Voices, Global Change* <http://www.internews.org/our-stories/program-news/disability-and-hiv-discussed-internews-journalism-roundtable-ethiopia> (accessed on 4 May 2013).

parliamentary committees, with the potential to leverage law-and policy-making processes.³⁶⁵ This is a good start towards discharging the national and international obligations that Ethiopia has undertaken. There is also an encouraging move by NGOs, educators as well as other professionals that are coming together and taking the lead in raising awareness of the general public as well as the policy makers to get the issue right.³⁶⁶ This indicates that unlike the Government, non-state actors seem to have put a step in the right direction.

4.2.2 Legal Barriers

The law is capable of changing society's attitudes and beliefs.³⁶⁷ Particularly, domestic laws are considered "one of the most effective means of facilitating social change and improving the status of PWDs."³⁶⁸ However, the opposite holds true as well where segregation of, and discrimination against PWDs is perpetuated and reinforced by discriminatory legislation. These laws, in turn, are a reflection of society's misperceptions about PWDs.³⁶⁹

This is evident in Ethiopia where negative attitudes towards PWDs are still present which is manifested in the laws that govern PWDs which are extremely discriminatory. For instance, the Ethiopian Criminal Code, contains a provision which allows a practice with plainly *eugenic* overtones under article 551(1). It reads as follows:

Termination of pregnancy by a recognised medical institution within the period permitted by the profession is not punishable where the child has an incurable and serious deformity

Equally distressing provision with an extensive implications for the maternity rights of mothers with disabilities is found under article 551(1) (d), under the terms of which, termination of pregnancy through a recognised medical procedure is permitted "where the pregnant woman,

³⁶⁵ In Ethiopia, no law exists that guarantees a specific number of disabled parliamentarians. However, some ministries of Ethiopia have employed some persons with a disability recently. MOLSA and BOLSA employed a number of six disabled persons, while the Ministry of Justice and the Ombudsman have also engaged some persons with a disability: ACPF (n 18 above) 21; International Labor Organization (ILO) *Ethiopia Disability Inclusion Support Services. Moving towards Disability Inclusion* (2011) http://www.ilo.org/wcmsp5/groups/public/---ed_emp/---ifp_skills/documents/publication/wcms_161489.pdf (accessed on 17 April 2012).

³⁶⁶ Tirussew (2005) (n 23 above) 14.

³⁶⁷ Landmine Survivors Network (n 79 above) 10.

³⁶⁸ As above.

³⁶⁹ As above.

owing to a physical or mental deficiency she suffers from or her minority, is physically as well as mentally unfit to bring up the child”³⁷⁰

Perhaps as a manifestation of a bigger problem, the way PWDs are described in nearly all of the major legislations and codes governing the country are based on the medical/charity-based approaches as opposed to the social/human-rights based approach. Most of the above mentioned legislations were promulgated in the 1960s, and still exist without any modifications to the terminologies they employ in describing PWDs.³⁷¹ For instance, both the English and Amharic (which is the Ethiopian national language) versions of the Civil Code of Ethiopia use terms such as ‘insane person’ and the ‘feeble minded’ to refer to people with intellectual impairments;³⁷² ‘cripples’, to refer to persons with physical impairments; and ‘infirm person’ for people with sensory impairments.³⁷³ Under Article 340, the Code introduces the term dewey – translated as infirm persons, a belittling term commonly used to refer to persons with physical disabilities and often associated with outright insult – to include “the deaf-mute, blind persons, and others who, as a consequence of a permanent infirmity are not capable to take care of themselves or to administer their property”³⁷⁴

According to the CRPD it is important for disability definitions to reflect the social model of disability enshrined in the Convention and for definitions based on a list or a description of impairments or on functional limitations to be revised.³⁷⁵ The CRPD Committee in its recent Concluding Observations on State parties’ reports also recommended the parties to speed up the review of legislative framework to bring it in full conformity with all provisions of the Convention³⁷⁶ and ensure that it reflects the human-rights based approach to disability as embodied in the Convention; and to incorporate an inclusive definition of disability and PWDs that is firmly rooted in the human-rights based approach to disability.³⁷⁷

³⁷⁰ Federal Democratic Republic of Ethiopia (FDRE) *Proclamation no 414/2004 The Criminal Code of the Federal democratic Republic of Ethiopia* (2005) 325.

³⁷¹ Imperial Government of Ethiopia (1960) 58.

³⁷² As above.

³⁷³ As above.

³⁷⁴ As above.

³⁷⁵ UN Human Rights Office of the High Commissioner for Human Rights (OHCHR), *Monitoring the Convention on the Rights of Persons with Disabilities: Guidance for Human Rights Monitors* (2010) 16.

³⁷⁶ CRPD Committee Concluding Observations on Peru (Un Doc CRPD/C/PER/CO/1, 2012) para 7.

³⁷⁷ CRPD Committee Concluding Observations on Hungary (Un Doc CRPD/C/HUN/CO/1, 2012) para 12.

Article 4 of the CRPD reflects this understanding. It requires that States Parties implement the rights contained in the CRPD, modify or abolish discriminatory laws and incorporate protection and promotion of disability rights in all policies and programmes. Therefore, when implementing the CRPD, States Parties should, among other things, undertake a systematic review of their national legislation to ensure that they comply with the CRPD.³⁷⁸ Thus clearly the Government of Ethiopia should amend or abolish any existing legislation which is not in line with the CRPD and does not reflect the social model of disability since progressive realisation entails examining current legislation, practices and procedures.

4.2.3 Physical Accessibility

One of the most direct barriers to full inclusion of CWDs is found in the physical environment. The medical and welfare approaches to disability consider the exclusion and isolation of PWDs as an “inevitable consequence of disability”. The social approach to disability, on the other hand, appropriately focuses on the disabling effects of the physical environment, and promotes inclusion by removing barriers.³⁷⁹

Accessibility is one of the core principles of the CRPD and part of the paradigm shift that it represents in “the evolution of thinking on disability and development.”³⁸⁰ Accordingly the CRPD recognises the fundamental rights of accessibility and inclusion of PWDs not only as objectives, but also as pre-requisites for the enjoyment of other rights.³⁸¹ The CRPD addresses four different aspects of accessibility: physical environment, transportation, communication and information.³⁸²

³⁷⁸ Landmine Survivors Network (n 79 above) 10.

³⁷⁹ As above, 37.

³⁸⁰ As above; under the CRPD, disability is an evolving concept that “results from the interaction between persons with impairments and attitudinal and environmental barriers that hinder their full and effective participation in society on an equal basis with others.”

³⁸¹ United Nations Enable (UN Enable) ‘Removing barriers to create an inclusive and accessible society for all’ (IDA removing barriers ‘ a theme for the International Day of Persons with Disabilities 3 December 2012.

www.un.org/disabilities/?id=1597 (accessed on 29 May 2012).

³⁸² CRPD, art 9; the article further requires that States Parties take appropriate measures to ensure that obstacles and barriers to accessibility are identified and eliminated, in relation to, among other things, buildings, indoor and outdoor facilities, including schools. It also requires the development of minimum standards and guidelines for accessibility, provision of training on accessibility issues, signage in Braille, and live assistance to facilitate accessibility. In addition, States Parties are required to promote assistance to ensure access to information by persons with disabilities and to promote access to information and communication technologies.

Unfortunately the notion of accessibility does not appear to have a long history in Ethiopia. Hence, physical structures or informational services are hardly disability friendly.³⁸³ With regard to physical barriers, school infrastructure and transportation services are not typically accessible to all in Ethiopia.³⁸⁴ Due to this fact CWDs are often excluded from educational services.³⁸⁵ Study also revealed that physical inaccessibility in schools accounted for the majority of children who never attended or who dropped out of school.³⁸⁶ Another study stresses physical and architectural barriers as playing significant role in limiting the mobility of CWDs within the school compound, as well as in classrooms in Ethiopia. The study indicated that the majority of special and ‘integrated’ schools in Ethiopia have a lot of features that impede free movement and accessibility.³⁸⁷

Although there are efforts by the government to make public schools facilities accessible to CWDs, the result of such efforts, though commendable, is taking place in quite limited places.³⁸⁸ However, with regard to private schools, since it is the profit motive which primarily drives investments, there is hardly any kind of such effort witnessed in accommodating CWDs. Most business managers are of the opinion that lack of accommodation for PWDs on the delivery of their service won’t have any effect to their overall performance. The country’s business community’s lack of appreciation of the importance of accommodating PWDs is a clear sign of the prevalent stereotypical view in the public.³⁸⁹ However the accessibility requirement stipulated under Article 9 of the CRPD does not only apply to government-owned buildings but also to privately owned buildings or public buildings built by private investors. As a result the Ethiopian Government is also under obligation to ensure that in addition to public schools, private schools also comply with the minimum standard of accessibility in accordance with the CRPD.

³⁸³ Federal Democratic Republic of Ethiopia (FDRE) *An Initial Treaty-specific Report on the Implementation of Convention on the Right of Persons with Disabilities (CRPD)* (2012) part two, 17.

³⁸⁴ USAID ‘Ethiopia Disability Inclusion Strategy 2011-2015’ (2011) 2; World Vision UK *Education’s missing millions: Including disabled children in education through EFA FTI processes and national sector plans* (2007) 32.

³⁸⁵ World Vision (n 384 above) 2.

³⁸⁶ The African Child Policy Forum (ACPF) *The lives of children with disabilities in Africa: A glimpse into a hidden world* Addis Ababa: The African Child Policy Forum (2011)35.

³⁸⁷ Tirussew (2005)(n 23 above) 167.

³⁸⁸ Ethiopian National Disability Action Network (ENDAN) ‘A study on Opportunities and Services for Persons with Disabilities in Addis Ababa’ (2010) 24.

³⁸⁹ As above.

Even once in school, scores of challenges work together to exclude and marginalise CWDs. The location of the school sometimes turns out to be unfavorable for certain groups of children: for instance, children with sensory or mental impairments can find schools noisy, confusing and threatening.³⁹⁰ Moreover in some schools, water taps are only put on during breaks and lunchtimes, and children must fight their way to drink. Children with visual impairments and physical impairments cannot fight their way to the water, and hence are forced to suppress their thirst. Toilets are not only at the far end of the schools, but also the way to them is often tortuous, and difficult to navigate for children with visual impairments.³⁹¹

There are several reasons for these unfavorable situations. The major reason identified for this limited result is lack of resources.³⁹² The fact that the physical environment within the country being established long before much of the laws and regulations that deal with accessibility take into effect has added to the problem. As discussed in the previous chapter,³⁹³ the Ethiopian Building Proclamation No. 624/2009 provides that any public building shall have a means of access suitable for use by physically impaired persons.³⁹⁴ However, the Proclamation does not have retroactive effect on buildings which are completed on or before the effective date of the Proclamation and on buildings which are under construction with a building permit issued before the effective date of this Proclamation.³⁹⁵ If the goal of the Proclamation is to make public buildings accessible to PWDs, its non retroactive effect makes little sense.

In addition to the obligations already mentioned above, the FDRE Constitution, under Article 41(3) grants every Ethiopian national the right to equal access to publicly funded social services. In this case education could be one of the publicly funded social services CWDs have the right to get equal access to, like their peers without disability. As discussed in chapter three of this thesis,³⁹⁶ even though Article 41 (3) of the Constitution fails to explicitly provide for the right to free primary education for CWDs, it does however make the government responsible creating an enabling environment and removing any barriers that may hinder their right to access education.

³⁹⁰ Tirusew (2005) (n 23 above) 86.

³⁹¹ The African Child Policy Forum (ACPF) *Educating Children with Disabilities: Ethiopia* (2011)59.

³⁹² Ethiopian National Disability Action Network (ENDAN) 'A study on Opportunities and Services for Persons with Disabilities in Addis Ababa' (2010)24.

³⁹³ See chapter three, section 3.4.3 of this thesis.

³⁹⁴ Ethiopian Building Proclamation No. 624/2009, art 36 (1).

³⁹⁵ As above, art 3(2).

³⁹⁶ See chapter three, section 3.4.1 of this thesis.

Unfortunately this is not the case when we take a look at the current situation of CWDs in Ethiopia where they are unable to equally access education because schools are physically inaccessible. Therefore the current situation of Ethiopia with regard to physical accessibility of schools for CWDs is a clear breach of the obligation stipulated in the FDRE Constitution.

Furthermore Ethiopia made a regional commitment when ratifying the ACRWC which is very clear about the right to physical accessibility. The aim of the Charter in this respect is to guarantee mobility for CWDs, and their access to public institutions and facilities. The relevant paragraph, reproduced below, is especially noteworthy in the context of education and the accessibility of public school buildings:

The States Parties to the present charter shall use their available resources with a view to achieving progressively the full convenience of the mentally and physically disabled person to movement and access to public highway buildings and other places to which persons with disabilities may legitimately want to have access.³⁹⁷

In its reference to important accessibility factors, like transportation, that have a bearing on educational access, the CRPD requires State Parties, including Ethiopia to:

...take appropriate measures to ensure to persons with disabilities access, on an equal basis with others, to the physical environment, to transportation, to information and communications... these measures, which shall include the identification and elimination of obstacles and barriers to accessibility, shall apply to, inter alia: (a) Buildings, roads, transportation, and other indoor and outdoor facilities, including schools, housing, medical facilities and workplaces.³⁹⁸

However in Ethiopia, the problem of physical inaccessibility is compounded by long distance to schools. Mainstream schools are available here and there across the country and are limited in number. Thus CWDs and are forced to travel distant place and pay for transportation in order to access education. However, physical impairment and economic condition prevents causes many of them to shy away from utilizing services and facilities made available for free.³⁹⁹ Transport and related specialist facilities are also very limited.⁴⁰⁰ The public transport system, which is the

³⁹⁷ ACRWC, art 13(3).

³⁹⁸ CRPD, art 9(1)(a).

³⁹⁹ Ethiopian National Disability Action Network (ENDAN) 'A study on Opportunities and Services for Persons with Disabilities in Addis Ababa' (2010)24.

⁴⁰⁰ Mihrete (2010) 12.

only affordable means of transport for most CWDs, becomes crammed with passengers.⁴⁰¹ In such situations, while children with physical impairments have difficulties with mounting and descending, those with visual impairments often miss their destinations.⁴⁰²

It is worth noting, however, that there are encouraging attempts at accommodating the rights of CWDs with new public transport designs, as in the case of a public bus recently launched by a private manufacturing company, which is reportedly fitted with accessibility features.⁴⁰³ Such similar good starts needs to be encouraged in order to enable CWDs lead an independent life and access education on an equal basis with others which is well stated and promoted in the CRPD and national obligations.

As can be seen clearly from the above discussion, in practice majority of CWDs are not getting access to education because of the non availability and physical inaccessibility of schools. Such instances are nothing but an indication that Ethiopia needs to work hard and push further in living up to the best expectation of various international human right instruments and national obligations. Even though Article 28(1) (a) of the CRC only requires the progressive realisation of educational rights, access to education in a non-discriminatory way is, however, understood to be “an immediate obligation and one not subject to progressive realisation.”⁴⁰⁴

Moreover as clearly discussed in the previous chapters inclusive education not only requires states to increase disabled children’s access to mainstream schools, but also their access to meaningful learning in those schools. To that end, the CRPD requires States to provide reasonable accommodations to CWDs.⁴⁰⁵ The CRPD Committee on its part suggests State Parties to include a definition of reasonable accommodation in national law which reflects the CRPD definition covering necessary and appropriate modification and adjustment applicable in a particular case beyond general accessibility. Furthermore, the State Party should ensure that the law explicitly recognises the refusal of reasonable accommodation constitutes disability based

⁴⁰¹ The African Child Policy Forum (ACPF) *Educating Children with Disabilities in Africa: Towards a policy of inclusion* (2011) 3, International Labour Organization (ILO) ‘Inclusion of People with Disabilities in Ethiopia’ (2009)62.

⁴⁰² The African Child Policy Forum (ACPF) *Educating Children with Disabilities: Ethiopia* (2011).57.

⁴⁰³ Mihrete (2010) 12.

⁴⁰⁴ Julia and Mezmur (n 3 above) 15.

⁴⁰⁵ CRPD, art 24(c).

discrimination.⁴⁰⁶ The Committee reiterates that denial of reasonable accommodation constitutes discrimination and the duty to provide reasonable accommodation is immediately applicable and not subject to progressive realisation.⁴⁰⁷

In the case of Ethiopia it is safe to say there is not much done in the area of “reasonable accommodation” even though there is no yardstick as to what constitutes “reasonable accommodation”. In this respect, one might say that reasonable accommodation is a preventive action and closely linked to the removal of barriers, which can cause disability and discrimination. The practice shows, CWDs are having a hard time to get to school and once they are in, to stay in, because of physical inaccessibility which is acting as a barrier for them to enjoy their right to education. This shows a clear lack of adjustment on the part of the Ethiopian Government to make schools physically accessible by removing barriers. It is also clear sign of discrimination against CWDs on the basis disability because discrimination on the basis of disability has been identified to include denial of reasonable accommodation. The denial of reasonable accommodation for a child with disability by an educational establishment is a clear breach of immediate obligations. However, even in theory, such concepts as reasonable accommodation, undue burden, universal design, etc., are relatively new to the Ethiopian legal system at least from disability point of view.⁴⁰⁸

In addition to physical access and in terms of availability of assistive and adaptive educational devices and facilities, the picture in most African countries is shocking. Most CWDs have to make do with the educational materials available to their non-disabled peers.⁴⁰⁹ This holds true in Ethiopia too where the problem of mobility is further complicated by the lack of assistive devices such as wheelchairs, white canes and crutches.⁴¹⁰ It is noteworthy that the average cost

⁴⁰⁶ CRPD Committee Concluding Observations on Peru (Un Doc CRPD/C/PER/CO/1, 2012) para 7(b); CRPD Committee Concluding Observations on Spain (Un Doc CRPD/C/ESP/CO/1, 2011) para 20; CRPD Committee Concluding Observations on Hungary (Un Doc CRPD/C/HUN/CO/1, 2012) para 16.

⁴⁰⁷ CRPD Committee Concluding Observations on Spain (Un Doc CRPD/C/ESP/CO/1, 2011) para 20; also see CRPD Committee *Guidelines on treaty-specific document to be submitted by states parties under article 35, paragraph 1, of the Convention on the Rights of Persons with Disabilities* (UN Doc. CRPD/C/2/3, 2009) section c para 3; the CRPD Committee requires for states to report on the effective measures taken to ensure PWDs equal and effective legal protection against all types of discrimination, including the provision of reasonable accommodation and on measure taken to achieve the de facto equality of children with disabilities by taking into account their diversity.

⁴⁰⁸ The ideas of reasonable accommodation and disproportionate or undue burden were introduced for the first time in 2008 through the enactment of the proclamation for the employment right of persons with disabilities: (n 225 above).

⁴⁰⁹ The African Child Policy Forum (ACPF) *Educating Children with Disabilities in Africa: Towards a policy of inclusion* (2011) 3, International Labour Organization (ILO) ‘Inclusion of People with Disabilities in Ethiopia’ (2009) 65.

⁴¹⁰ The African Child Policy Forum (ACPF) *Educating Children with Disabilities: Ethiopia* (2011). 57.

of crutches is about US \$8, while a wheel-chair costs an overwhelming US \$224, not likely affordable for an average Ethiopian family.⁴¹¹ The cost of disability-friendly educational materials is also prohibitively high. An imported hearing aid has an estimated cost of about US \$160277, yet again beyond reach for most Ethiopian households, which have an average income per household of about US \$212278.⁴¹²

This brings us to an important point that the availability or otherwise of proper teaching aids and educational materials, school buildings, and the like have the potential to affect the quality of education provided to CWDs. General Comment No 1 of the CRC Committee on the Aims of Education also states that article 29(1) of the CRC insists up on the need for education to be child-centered, child friendly and empowering besides adding a qualitative dimension which recognises the rights and inherent dignity of the child to the right to education.⁴¹³ Therefore, the child's right to education in addition to being a matter of access is also a matter of content. Accordingly Ethiopia should strive to ensure reasonable accommodation of CWDs so that they receive an education which is of good quality.

Additionally, it is imperative that in the efforts to legislate the removal of physical barriers to inclusion, PWDs and their representative organisations be consulted. Otherwise, measures taken to ensure accessibility may be inadequate or ensure accessibility to only a limited group of PWDs.⁴¹⁴

4.2.4 Violence/Bullying and Corporal Punishment in Schools

All children are ultimately vulnerable to violence, the risks are however high in the case of CWDs. Research indicates that CWDs are nearly four times more likely to experience physical violence, including corporal punishment, than CWDs.⁴¹⁵ CWDs are also at greater risk in

⁴¹¹ The Federal Democratic Republic of Ethiopia, Ministry of Education *Directory of Special Needs Education Services, Equipment and Materials* (2007b) 29.

⁴¹² The African Child Policy Forum (ACPF) *Educating Children with Disabilities: Ethiopia* (2011). 67.

⁴¹³ CRC Committee General Comment No 1 on the aims of education.

⁴¹⁴ UNESCO (2007) (n 78 above) 39.

⁴¹⁵ The punishments they experience may be more severe: a UNICEF study found that in seven countries, children with disabilities were more likely than children without disabilities to be hit or slapped on the face, head or ears or be hit over and over with an implement in the home: Elinor Milne, Global Initiative to End All Corporal Punishment of Children: Submission to the Committee on the Rights of Persons with Disabilities for the half day of general discussion on women and girls with disabilities in April 2013).

school⁴¹⁶ in which they face both greater probability of being beaten, bullied or excluded and greater risk of sexual abuse than their non-disabled peers.⁴¹⁷

According to ACPF's study in 2010, the findings are deeply disturbing in relation to prevalence of violence against CWDs in Ethiopia. Highly prevalent forms of abuse included being physically beaten.⁴¹⁸ According to the study, the main perpetrators of violence are other children at schools, among others.⁴¹⁹ Moreover in a study carried out in one primary school in Addis Ababa into the state of education of CWDs who are mainstreamed by default, it has been reported that there is a lot of misunderstandings between teachers and CWDs, which triggered ill treatment and corporal punishment.⁴²⁰ This can be attributed to the lack of clear guidelines at national level on the care to be taken in disciplining these children.⁴²¹

According to the CRC and the CRPD, Ethiopia has a legal obligation to end violence against CWDs, including corporal punishment in institutions, educational facilities and private homes. The Preamble of the CRPD for instance, recognises that CWDs should enjoy human rights on an equal basis with other children and recalls the obligations to this end of States Parties to the Convention.⁴²² Several other provisions of the CRPD are also relevant to the obligation to prohibit and eliminate all corporal punishment.⁴²³

The CRPD Committee⁴²⁴ has already raised the issue in its examinations of China⁴²⁵, Paraguay⁴²⁶ and Tunisia⁴²⁷. The CRC Committee, on its part, has consistently made it clear that the

⁴¹⁶ As above.

⁴¹⁷ The African Child Policy Forum (ACPF) *Violence against Children with Disabilities in Africa: Field studies from Cameroon, Ethiopia, Senegal, Uganda and Zambia* (2011) 1.

⁴¹⁸ The African Child Policy Forum (ACPF) *Breaking the Silence: Violence against Children with Disabilities* (2010).

⁴¹⁹ As above.

⁴²⁰ Girls with disabilities are at particular risk of corporal punishment: enormous numbers of them experience painful and humiliating punitive violence from family members, teachers, carers and others in states in all regions due to the double discrimination they experience based on their disability and their gender: Girls with disabilities have a high risk of sexual abuse at school, on their way to school and in the residential areas. Although it is hidden, there is information of abused girls with disabilities in school and out of school environment in Ethiopia: Milne (n 414 above); Lakech (n 342 above); Tirussew (2005) (n 23 above) 90; ACPF (n 18 above) 20.

⁴²¹ The African Child Policy Forum (ACPF) *Educating Children with Disabilities: Ethiopia* (2011).73.

⁴²² CRPD, Preamble.

⁴²³ See CRPD, art 7, art 16 (1) and (5), art 17, art 15, art 10, art 24 and art 25.

⁴²⁴ States are expected to report to the CRPD Committee on legislative, administrative, social, educational and other measures taken to protect persons with disabilities, both within and outside the home, from all forms of exploitation, violence and abuse, including the gender and child based aspects: see CRPD Committee *Guidelines on treaty-specific document to be submitted by states parties under article 35, paragraph 1, of the Convention on the Rights of Persons with Disabilities* (UN Doc. CRPD/C/2/3, 2009) 11.

Convention requires prohibition of all corporal punishment, including in the home.⁴²⁸ General Comment No. 13 on the right of the child to freedom from all forms of violence⁴²⁹ also covers corporal punishment, and both it and General Comment No. 9 on the rights of CWDs⁴³⁰ recognise that CWDs are particularly vulnerable to violence. The Committee systematically recommends prohibition in its Concluding Observations.

Thus, the burden falls on Ethiopia to ensure that the risk of violence against CWDs is further minimised by criminalising all forms of corporal punishment in accordance with the CRC and CRPD. Advocacy campaigns and strong enforcement of legislation that support CWDs is crucial in minimising their risk of violence and maximising their protection. National legislation must also reflect the provisions of the CRPD and the CRC ratified by Ethiopia.

4.3 Lack of Resources

A lack of sufficient human and financial resources is widely accepted as a serious barrier to the successful implementation of inclusive education.⁴³¹ In terms of lack of resources, inadequate funding and inadequate teacher supply training are discussed below as part of the barriers posing a challenge to the education of CWDs.

4.3.1 Inadequate Teacher Supply and Training

Another major challenge that CWDs face in accessing education relates to institutional problem that exists on the part of schools. Schools should have the required number of trained human power which among them, teachers are vital to including CWDs in education.⁴³² Teacher training

⁴²⁵ Committee on the Rights of Persons with Disabilities (2012), *List of issues to be taken up in connection with the consideration of the initial report of China* (CRPD/C/CHN/Q/1), para. 62.

⁴²⁶ Committee on the Rights of Persons with Disabilities (2012), *List of issues to be taken up in connection with the consideration of the initial report of Paraguay* (CRPD/C/PRY/Q/1), para. 19.

⁴²⁷ Committee on the Rights of Persons with Disabilities (2011), *Concluding observations on initial report of Tunisia* (CRPD/C/TUN/CO/1), paras. 6 and 16.

⁴²⁸ In its General Comment No. 8 (2006) on the right of the child to protection from corporal punishment and other cruel or degrading forms of punishment the Committee consolidated and confirmed these obligations. Committee on the Rights of the Child (2006), *General Comment No. 8: The right of the child to protection from corporal punishment and other cruel or degrading forms of punishment (arts. 19; 28, para. 2; and 37, inter alia)* (CRC/C/GC/8).

⁴²⁹ Committee on the Rights of the Child (2011), *General Comment No. 13: The right of the child to freedom from all forms of violence* (CRC/C/GC/13).

⁴³⁰ CRC Committee *General Comment No.9* (2006).

⁴³¹ World Vision UK *Education's missing millions: Including disabled children in education through EFA FTI processes and national sector plans* (2007). 25.

⁴³² As above, 32; Ethiopian National Disability Action Network (ENDAN) 'A study on Opportunities and Services for Persons with Disabilities in Addis Ababa' (2010) 25.

has been identified as one of the critical strategies to facilitate more inclusion in regular classes.⁴³³

However in Ethiopia, the situation is discouraging when it comes to teacher training for the purpose of SNE. The Special Needs Education Program Strategy indicates the number of teachers trained as not more than 400 in the country.⁴³⁴ In accordance to the plan to have 2 special needs teachers in each school there is a need to have 34,000 for 17,000 schools.⁴³⁵ Having such trained teachers by itself is encouraging, but they should be equipped with appropriate tools for implementation, in order to facilitate the community and family, as well as encourage PWDs to participate in the school system.⁴³⁶

According to Article 4 of the CPRD Ethiopia is obliged to employ teachers who are qualified in sign language and/or Braille and to train professionals and staff who work at all level of education in order to help ensure the realisation of the right to education for CWDs. The CRPD Committee on its part recommends the reduction of the teacher-student ratio as well as an intensive training of teachers in “special education needs” and reasonable accommodation.⁴³⁷ But in Ethiopia the practice shows that this obligation is far from being discharged.

With regard to international cooperation in the area of inclusive education in Ethiopia, emphasis has been given to teacher training on special educational needs.⁴³⁸ For instance, a project has been initiated by Ministry of Foreign Affairs which involves financing pre- and in-service teacher education and the creation of a multi-leveled support system (Federal, Regional, Woreda and school levels) in special education needs. The project aims to meet the commitments in the SNE Program Strategy. It will involve collaboration between an Ethiopian and a Finnish university.⁴³⁹ This is a step in the right direction in order to discharge the obligation under Article 32 of the CRPD.

⁴³³ World Vision UK *Education's missing millions: Including disabled children in education through EFA FTI processes and national sector plans* (2007). 32.

⁴³⁴ MOE (2006).

⁴³⁵ As above.

⁴³⁶ Ethiopian National Disability Action Network (ENDAN) 'A study on Opportunities and Services for Persons with Disabilities in Addis Ababa' (2010) 25.

⁴³⁷ CRPD Committee, Concluding Observation on Spain (Un Doc CRPD/C/ESP/CO/1, 2011) para 44.

⁴³⁸ Lewis (n 25 above) 37.

⁴³⁹ See <http://www.iyu.fi/hallinto/uniservices/en/news/special-needs-education-programme-to-ethiopia> (accessed 9 March 2012).

In addition to the shortage of teachers, some existing teachers are not qualified for the grade levels they teach.⁴⁴⁰ A study conducted by MOE on the ‘Quality and Effectiveness of Teacher Education in Ethiopia’, also concluded that the system’s ability to provide education in accordance with the goals of the Education and Training Policy was weakened by several factors – the primary one being teacher performance.⁴⁴¹ This is evident because, despite having had SNE training, teachers in Ethiopia felt badly equipped to teach children with intellectual disabilities. Other teachers were unaware of the presence of hearing impaired children in their classes, or, if they were aware, were not knowledgeable about how to assist them.⁴⁴² The crisis of inadequately trained teachers is further evidenced by the high number of children who reportedly drop out of school because their teachers felt incapable of teaching them.⁴⁴³

To that end, the CRC Committee in its Concluding Observation has urged Ethiopia to make sure that professionals working with and for CWDs in particular teachers, among others are adequately trained.⁴⁴⁴ Ethiopia is also under obligation according to the CRPD to provide necessary learning materials and employ qualified and professional teachers on special needs of CWDs, however, in practice it is far from being effectively discharged.

4.3.2 Inadequate Funding

Increasing access as well as improving the quality of education requires budgetary allocation.⁴⁴⁵ As in the Salamanca Statement and Framework for Action on Special Needs Education indicated, a well-structured funding arrangement is desirable for meeting the cost of providing adequate educational services for students with disabilities in inclusive schools.⁴⁴⁶ However contrary to what international human rights law demands, funding for education tends to be

⁴⁴⁰ Lakech (n 346 above) 4.

⁴⁴¹ UNICEF ‘Child Friendly schools: Ethiopia Case Study’ (2010) 16.

http://www.unicef.org/education/files/FINAL_Ethiopia_CFS_Case_Study.pdf (accessed on June 2012).

⁴⁴² The African Child Policy Forum (ACPF) *The lives of children with disabilities in Africa: A glimpse into a hidden world* Addis Ababa: The African Child Policy Forum (2011) 36.

⁴⁴³ As above: Many people consulted in the study felt that teachers were not adequately trained to meet the needs of children with disabilities and said that the demand for SNE training was far greater than the supply. They also asserted that many children with disabilities in the locality attended schools in which no teachers had received SNE training. Consequently, teachers were not capable of providing appropriate and effective learning opportunities for all their students.

⁴⁴⁴ CRC Committee Concluding Observations (CRC/C/ETH/CO/3) (2006).

⁴⁴⁵ The African Child Policy Forum (ACPF) *The lives of children with disabilities in Africa: A glimpse into a hidden world* Addis Ababa: The African Child Policy Forum (2011) 62.

⁴⁴⁶ As above.

treated as discretionary and inadequate financial provision remains one to the major barrier to the implementation of meaningful programs such as inclusive education in many countries.⁴⁴⁷

Similarly in Ethiopia money has been identified as a constraint to run inclusive education programs.⁴⁴⁸ The Ministry of Education (MOE) has identified inadequacy of education financing as a major challenge in its effort to meet the ESDP III targets set for 2009/10.⁴⁴⁹ Likewise the amount allocated for SNE is very limited. The budget allocated for SNE in ESDP III for the 2005/06–2009/10 period was only 5 million, a very insignificant percentage share of the total allocation of the estimated total cost of ESDP III of Birr 53.9 billion.⁴⁵⁰ Out of a total planned budget allocation of Birr 140, 627 billion to finance ESDP IV, the share of SNE accounted for only 2 per cent (or 281 million).⁴⁵¹ This is despite the fact that the country has the obligation to allocate an ever-increasing amount of resources to provide public health, education and other social services. Article 41(3) of the FDRE Constitution accords every Ethiopian the right to equal access to publicly funded social services.⁴⁵² Tomasevski believes the choice of access rather than right to education points to an underlying decision not to recognise education as a human right.⁴⁵³

The CRPD Committee has submitted its Concluding Observation on the report of States in this respect and it recommends States to increase its efforts to provide reasonable accommodation in education, allocating sufficient financial and human resources to implement the right to inclusive education. It also urges them to ensure that the parents of CWDs are not obliged to pay for the education or for the measures of reasonable accommodation in mainstream schools.⁴⁵⁴

It is noteworthy that according to a report the majority of surveyed children in school, regardless of the nature of their disability or location, were being educated in mainstream schools.⁴⁵⁵ This clearly suggests that spending resources on making mainstream schools more inclusive is a

⁴⁴⁷ This is evident in the fact that a handful of countries in the world have effective constitutional guarantees which oblige the government to allocate to education a specific amount of its budget: UNICEF (n 11 above).

⁴⁴⁸ As above.

⁴⁴⁹ MOE (2005) 68.

⁴⁵⁰ As above.

⁴⁵¹ MOE (2010).

⁴⁵² FDRE Education and Training Policy (1994).

⁴⁵³ Tomasevski (n 197 above).

⁴⁵⁴ CRPD Committee Concluding Observations on Hungary (Un Doc CRPD/C/HUN/CO/1, 2012) paras. 41 and 42; CRPD Committee Concluding Observations on Spain (Un Doc CRPD/C/ESP/CO/1, 2011) para 41.

⁴⁵⁵ The African Child Policy Forum (ACPF) *The lives of children with disabilities in Africa: A glimpse into a hidden world* Addis Ababa: The African Child Policy Forum (2011) 38.

worthy investment for increasing the educational opportunities of CWDs and their non-disabled peers. It also indicates that an inclusive approach is more feasible than approaches laid out in the SNE strategy of Ethiopia and many other African countries, which revolve around opening special unit classes in mainstream schools in which children with a range of disabilities are lumped together.⁴⁵⁶ The current overall financing arrangement to schools fails to mention how it would address the special educational needs of CWDs, despite its wish to implement a new inclusive strategy.

To sum up, there has been development on specifically stipulating CWDs in the budgeting for education. However, the inadequacy of the budget to effectively implement the right left the children still at a marginalised status. Inaccessibility of schools, mainly in rural areas, lack of reasonable accommodation in school setting,⁴⁵⁷ lack of education assistive devices and materials and lack of incentives for those teachers who take further training on special needs/inclusive education worsen the problem.⁴⁵⁸ This requires increment of budget and/or seeking international cooperation⁴⁵⁹ to the level where these problems, mainly associated with financial resource, are solved.

4.4 Limitation of Statistics and Data

An important first step towards realising the rights of CWDs is gathering credible, accurate and up-to-date prevalence data on the age, gender and geographical spread of childhood disability in a country.⁴⁶⁰ Comprehensive and accurate data on disability is an essential element for the planning, implementation and monitoring of services of PWDs including education.⁴⁶¹ Likewise the lack of reliable information impacts negatively on the planning and development of

⁴⁵⁶ As above.

⁴⁵⁷ Inaccessible school milieu include: buildings with stairs, inaccessible toilet rooms, inaccessible class room arrangement, buildings with no wheelchair ramp etc... there is a move by the ministry of education to make 'plasma education' accessible for students with hearing disabilities.

⁴⁵⁸ There is no additional payment or increment of salary for those teachers who attend further training on special needs/inclusive education and get certified. This makes the teachers uninterested to attend the training out of their will. For example in 2008 only 16 teachers have attended Sebeta School for the Blind, which has the intake capacity of 50 teachers a year: see MOE (2010) 76-77; MOE (2006) (n 40 above) 10.

⁴⁵⁹ It is noted that the government of Finland is currently cooperating with the MOE in implementing special needs/inclusive education. Due to lack of dependable disaggregated data on the number of CWD, lack of/poor planning and reporting by regional and Woreda sector offices, inadequacy of expert human resource and the like have made it difficult to make use of the assistance provided by the Finish government to the maximum amount extended.

⁴⁶⁰ The African Child Policy Forum (ACPF) *The lives of children with disabilities in Africa: A glimpse into a hidden world* Addis Ababa: The African Child Policy Forum (2011) 7.

⁴⁶¹ As above.

education services and strategies for creating an enabling environment for the equalisation of opportunities.⁴⁶²

Unfortunately, such prevalence data is hard to come by in most African countries,⁴⁶³ Ethiopia is no exception. For instance Ethiopia's 1994 Population and Housing Census indicated a total population of 53,477,265 of whom 991,916 were disabled (1.85 per cent of the population).⁴⁶⁴ However, as the various sources that cite this statistic highlight, this is well below the ten per cent estimate that is so often used.⁴⁶⁵ As a result many authors have strongly cautioned against placing too high a level of trust in existing statistics.

According to the 2007 Population and Housing Census of Ethiopia, there are estimated 864,218 PWDs in Ethiopia (1.17% of the population) from the total population of 73,750,932.⁴⁶⁶ Children's share from this figure is 283,606.⁴⁶⁷ The 2007 data shows reduction of the number of PWD in the country compared to the 1997 Census report.⁴⁶⁸ More recently, the World Report on Disability from 2011 estimates the prevalence of PWDs in Ethiopia even on 17.6 per cent.⁴⁶⁹ If actually 17.6 per cent of the Ethiopian population is disabled, the exact number in 2011 would amount to 14,449,952 people.⁴⁷⁰ Since various sources cite different figures for Ethiopia's disabled population even within similar time frames, it is unlikely that any statistics can be treated with certainty.

Some say that there have been serious concerns about potential under-reporting of disability, especially during the 1994 census, due to stigma and people's different interpretations of the

⁴⁶² As above.

⁴⁶³ The high cost of collecting systematic and comprehensive data is often mentioned as a 'major contributor' to the absence of disability-specific data in developing countries. However this is considered by the representatives of PWDs as just another excuse to discriminate against them Wakene(n 274 above).

⁴⁶⁴ The 2007 census points out that the total population has gone up to 73,918,505, but this initial summary document does not yet contain information on disability: see Central Statistics Agency (CSA), The 2007 Population and Housing Census of Ethiopia: Statistical Report at Country Level (2008) 169-237.

⁴⁶⁵ The figure of 10 per cent seems to be the default estimate for many governments, possibly based on a figure from the World Programme of Action Concerning Disabled Persons, United Nations (1983).

⁴⁶⁶ CSA, the 2007 Population and Housing Census 169-237.

⁴⁶⁷ As above; the estimate on children with disabilities includes children until the age of 19 because of lack of disaggregated data until the age of 18 years. Among the total number of children the male population comprises 157,007 while the women population encompasses 126,599.

⁴⁶⁸ MOLSA *Developmental Social Welfare Policy* (1996) 59.

⁴⁶⁹ WHO (2011) 214.

⁴⁷⁰ Saskia van Veen, Barbara Regeer 'Mainstreaming Disability: Literature study on the laws and policies regarding the rights of persons with disabilities in Ethiopia, India and Kenya' 27.

census question.⁴⁷¹ They argue that these data are likely to be inaccurate, partly because there is no general term in Ethiopian languages that fits directly with the English term disability, and hence the question is likely to mean different things to different people.⁴⁷² Furthermore, the ambiguous census question ‘Is there member of household who is physically or mentally disabled?’ could have resulted in under-reporting.⁴⁷³ This is a clear indication of the fact that Ethiopia needs to work hard to raise awareness about disability and change the negative attitude towards disability for good.

According to the CRPDs Article 31, Governments are required to collect appropriate information, including statistical and research data, to enable them to formulate and implement policies to give effect to the Convention. The statistics and research data must be disaggregated, for example, by gender, age, and ethnicity.⁴⁷⁴ They must also be used to identify and address the barriers faced by CWDs in exercising their rights.⁴⁷⁵

In Ethiopia the 2007 Census identified PWDs as persons who were unable to carry out or limited in carrying out activities that others can do due to congenital or long term physical or mental disabilities.⁴⁷⁶ Limitation to physical and mental requirements has the effect of leaving out certain category of PWDs, as can be observed from the CRPD that employed wide scope of persons to be protected as disabled. The question used in the Census questionnaire focused on observable disabilities leaving out diverse disabilities in the status ‘other mental or physical’ damage.⁴⁷⁷ This evidences that data gathering is done in a way that has not recognised heterogeneity of disabilities. Disaggregated data on wide range of categories could have helped

⁴⁷¹ The Federation of Ethiopian National Associations for Persons with Disabilities (FENAPD) Disability and the Situation of PWDs in Ethiopia.

<http://ethiodisabilitiesfederation.org/pwds.html> (accessed on 22 January 2012); ACPF (n 19 above) 2.

⁴⁷² African Child Policy Forum (ACPF) *Educating Children with Disabilities: Ethiopia* (2011) 1.

⁴⁷³ Moreover “inadequate definitions of disability and persons with disabilities, confusion or misconception of terms, omission of different disability groups and the unwillingness of families, due to cultural reasons, to disclose their members who have a disability” have been identified as additional factors for under-reporting of disability. The census also excluded homeless people (an estimated one-in three street children have a disability): see Lewis (n 25 above) 10.

⁴⁷⁴ Also see CRPD Committee *Guidelines on treaty-specific document to be submitted by states parties under article 35, paragraph 1, of the Convention on the Rights of Persons with Disabilities* (UN Doc. CRPD/C/2/3, 2009) section A.3.2 para h.

⁴⁷⁵ This means that the focus should on the number of people who experience barriers rather than gathering data on specific impairments: G. Lansdown (n 5 above) 44.

⁴⁷⁶ In contrast to the 1994 census, the 2007 census excluded short-term difficulties due to temporary conditions, so persons with limited vision or hearing who were considered to perform activities ‘within the range considered normal for a human being’ were not classified as disabled. Leprosy, epilepsy and intellectual or learning disabilities (with the exception of severe mental impairment) were also excluded.

⁴⁷⁷ The question used reads as: Does (name) have a problem of seeing, hearing, speaking and/or standing/walking/seating, body parts movement, functioning of hands/legs or mental retardation or mental problem or other mental or physical damage?

to identify and employ implementation measures in accordance with the needs of particular category of CWDs, and thereby achieve better outcome.⁴⁷⁸ In this regard it is possible to systematically collect such data through national disability survey by looking into experiences of other states.⁴⁷⁹

Ethiopia cannot provide accurate nationwide statistics for CWDs who are already in school either. Sources primarily offer estimates of the numbers of children, who may have special educational needs, but it is often not clear whether these children are already in the education system, or are just potential students.⁴⁸⁰ Therefore, when dealing with the education of CWDs, it is not enough nor reliable to look only at statistics.⁴⁸¹ This has a grave impact in the implementation of the right to education of CWDs in the country by limiting the number of targets of implementation, kind and amount of international cooperation to be sought, minimising budget to be designed for the implementation process, and reducing coverage of all parts of the country (urban and rural areas), among others.

On a different note, the role that independent National Human Right Institutions (NHRIs) would play in the implementation of the right to education of CWDs is significant.⁴⁸² The Ethiopian Human Right Commission (EHRC)⁴⁸³ is mandated to supervise the implementation of all human right treaties that the country has ratified.⁴⁸⁴ However the EHRC due to many reasons has not carried out considerable activities in the protection and promotion of the right to education of CWDs. There is no focal point (desk) that is specifically intended to address issues of CWDs. Except for some minor awareness raising activities provided for members of the children's parliament and some administrative bodies concerned with services that could generally bear right to education of CWDs, much as not been achieved that could have effect on their rights.⁴⁸⁵

⁴⁷⁸ Though the Census report shows some disaggregation is done based on sex and age, it is obvious the data is not disaggregated in a variety of categories including various disabilities, urban rural distinction and the like.

⁴⁷⁹ CRPD Committee Concluding Observations on Argentina (Un Doc CRPD/C/ARG/CO/1, 2012) paras. 49 and 50.

⁴⁸⁰ Lewis (n 25 above) 11.

⁴⁸¹ As above, 14.

⁴⁸² CRC General Comment No. 2, para. 1.

⁴⁸³ The objective for the establishment of the Ethiopian Human Rights Commission (hereinafter EHRC) is 'to educate the public be aware of human rights, see to it that human rights are protected, respected and fully enforced as well as to have the necessary measure taken where they are found to have been violated.' To achieve such objectives it is entrusted with broad range of powers and duties: see Proclamation No.210/2000, art. 5 & 6.

⁴⁸⁴ Federal Democratic Republic of Ethiopia (FDRE) *An Initial Treaty-specific Report on the Implementation of Convention on the Right of Persons with Disabilities* (CRPD) (2012) part two, 58.

⁴⁸⁵ Wakene (n 274 above).

The major reasons identified are shortage of financial and human resources and lack of experts on issues of CWDs.⁴⁸⁶

This is such a loss because the EHRC would have helped to lessen the problem regarding lack of statistics and data on CWDs since it would have been able to document some information on them if it had worked properly and efficiently. Therefore, it is safe to conclude that the EHRC is not playing significant role in the implementation of the rights of CWDs in Ethiopia.

And for what is worse, there is no comprehensive legal framework for the establishment of a civil registration or birth registration system in Ethiopia⁴⁸⁷ which makes things worse because birth registration data plays an important role in the planning of a country's economic and social development and affects different planning and policy issues including budget allocation, access to basic social services, including education. In Ethiopia CWDs are not registered at birth by a Government authority that recognises the civil status of the newborn. This complicates the already existing problem of lack of accurate statistics and data on CWDs since lack of registration still means that their needs are not anticipated and accordingly planned for.

From the above discussions it can be concluded that physical accessibility remains a major challenge facing CWDs, from accessing education. Furthermore disability is frequently seen as a charity issue and there is minimal understanding of the social model of disability, which views impairment as an ordinary part of life, and disability as the result of society's lack of accommodation to – and discrimination against – CWDs.⁴⁸⁸ Moreover teachers providing for the educational needs of CWDs are not only inadequate in supply, but also ill-equipped and poorly motivated. A mechanism for funding the education of CWDs is also absent in Ethiopia. Last but not least, CWDs are invisible when it comes to surveys about children in Ethiopia. What little national census data is available, it clearly understates the number of children CWDs.

⁴⁸⁶ As above.

⁴⁸⁷ Births are recorded by hospitals, churches and municipalities. However none of the records of birth outlined can be considered as birth registers since they have no legal consequence. They are not related to the recognition and protection of personal rights or the realisation of other socio-economic and political rights. In addition, their coverage is limited and their quality is not satisfactory. Furthermore, information from these records is not collected in a central place or registry nor is it analysed according to birth and fertility patterns for demographic or other statistical purposes: Plan Ethiopia, The African Child Policy Forum 'Perception and Practice: a review of birth registration in Addis Ababa and regional states of Oromia, Amhara and SNNPR, Ethiopia' (2005).

⁴⁸⁸ The African Child Policy Forum (ACPF) *Children with Disabilities in Ethiopia: The hidden reality* (2011)1.

CHAPTER FIVE

CONCLUSIONS AND RECOMMENDATIONS

5.1 Introduction

This study examined the issue of education of CWDs in Ethiopia and the international, regional and national normative framework as it currently is and as it ought to be. The study has at its core the firm assertion that currently many CWDs in Ethiopia are not accessing education, in particular, inclusive education. Apart from exploring the normative framework surrounding the issue, the study has also exposed the factors that are impeding CWDs from exercising their right to education in accordance with those international and regional standards. These factors are categorised in this study as legal/institutional, environmental and attitudinal barriers.

Based on the findings of the study, this chapter provides the conclusions and recommendations on the appropriate legislative and policy measures, which comply with international standards that Ethiopia can take to realise the right to inclusive education of CWDs.

5.2 Conclusion

As to the research question ‘what are the international standards on the right to education of CWDs? The study has explored that the international standards on the right to education of CWDs is anchored in a number international instruments to which Ethiopia is party. These include the CRPD, the CRC, and the ACRWC. These instruments require the education of CWDs to be physically and economically accessible without discrimination; the content of education to be of good quality, and that the school environment to be capable of accommodating the learning of all children. Furthermore, the standards require the provision of education to be based on the concept of inclusive education which entails the provision of education that ensures the effective learning of CWDs in mainstream schools together with their non-disabled peers.⁴⁸⁹ Most of all, the standards expect the conceptualisation of the education of CWDs to be based on the social and human rights models of disability. These models of disability require states to ensure that CWDs are able to access education on an equal foot with other children.

⁴⁸⁹ CRPD, art 24(2) (b).

However despite having ratified the relevant international and regional standards less than 1 per cent of Ethiopian CWDs have access to education. The estimated proportion of CWDs, among the estimated 30 million school-aged children in the country, is 10–20%.⁴⁹⁰ This high degree of exclusion is the result of several interrelated factors, of which for the purpose of this thesis, six stand out.

Firstly, the existing legislative and policy frameworks are inadequate and do not fully comply with the international standards to be able to ensure the realisation of the right to education of CWDs. Furthermore the frameworks are still embedded in the ‘medical’ and ‘charity’ models and do not emphasise inclusive education.

To elaborate this further, Ethiopia does not recognise the concept of free and compulsory primary education that is backed by law. The Bill of Rights in the FDRE Constitution makes no specific reference to the right to education for CWDs or indeed other persons nor does it recognise CWDs right to inclusive education. Consequently, it can hardly be said that the FDRE Constitution duly recognises CWDs; nor the particular rights they require to equally enjoy rights with other members of the society. Therefore, it is safe to conclude that the Government of Ethiopia legislations and policies on education for CWDs do not conform to international human rights standards and norms.

Secondly, physical accessibility remains a major challenge facing CWDs, from accessing education. From surroundings of the school facilities, to inappropriate public transport coupled with a lack of assistive devices such as wheelchairs, white canes and crutches, has complicated the problem of accessibility. Thirdly, disability is frequently seen as a charity issue and there is minimal understanding of the social model of disability, which views impairment as an ordinary part of life, and disability as the result of society’s lack of accommodation to – and discrimination against – CWDs.⁴⁹¹ Fourthly, teachers providing for the educational needs of CWDs are not only inadequate in supply, but also ill-equipped and poorly motivated. Fifthly, a

⁴⁹⁰ MOE (2005) art (2) section 9.2.

⁴⁹¹ The African Child Policy Forum (ACPF) *Children with Disabilities in Ethiopia: The hidden reality* (2011) 1.

mechanism for funding the education of CWDs is absent in Ethiopia and the amount allocated for the 2005/06–2009/10 period is only Birr 5 million, a very insignificant percentage of the estimated total cost of ESDP iii of Birr 53.9 billion.⁴⁹² Last but not least, CWDs are invisible when it comes to surveys about children in Ethiopia. What little national census data is available, it clearly understates the number of children CWDs. National statistics on school enrolment fail to include CWDs. Without accurate data it is difficult to plan and allocate resources. Overall even where there is adequate legislative framework, negative attitudes, lack of awareness and limited funding mean that the laws and policies are not put into practice in a child friendly manner.

5.3 Recommendations

The following recommendations are drawn from this thesis. They appear in no particular priority order.

5.3.1 The Legislative Framework

The Constitution, as the supreme law, is required to provide an effective normative framework to ensure the enjoyment of the right to education of CWDs. It is recommended that the provisions on economic, social and cultural right⁴⁹³ should be revised to explicitly recognise the right to free and compulsory primary education of all children including CWDs; and to require the State to ensure an inclusive education system at all levels.

The anti-discrimination clause in the FDRE Constitution should also be revised to explicitly include disability in its categories of groups listed for non-discrimination as it is important for Constitutional non-discrimination frameworks to include disability as a prohibited ground, and provide for redress in case of discrimination. Furthermore, socio-economic rights in the Constitution shall be entrenched as entitlements (rights) rather than their current terminology in a language of duties. Socio-economic rights related provisions in the National Policy Principles and Objectives part need to be moved to the bill of rights chapter. Justiciability of the rights has to also be determined by the Constitution. However it is highly unlikely that this will take place in the near future as Constitutional amendment is not as easy as amendment of other laws

⁴⁹² MOE (2005) 68.

⁴⁹³ FDRE Constitution, art 41.

coupled with the Constitution's extremely stringent requirements for the amendment of its chapter on fundamental rights and freedoms.⁴⁹⁴

Furthermore there is also a need for a paradigm shift from the medical model of disability to a human rights-based approach when describing PWDs. Thus, it is critical to ensure that the country's entire body of law, beginning with the Constitution, is consistent in applying the human rights-based approach when legislating on the rights of PWDs.

The Ethiopian Building Proclamation (No 624/2009) needs to be revised to have retroactive effect in order to give effect to Article 9 of the CRPD in order to make all buildings, public and private, accessible to CWDs. Furthermore the Government of Ethiopia should any revise any disability unfriendly terminologies and definitions that are based on the charity and/or medical model of disability. For instance there is a need to revise the terms are employed to describe PWDs in the Civil and Criminal Code of Ethiopia to reflect the human-rights based approach to disability as embodied in the CRPD.

The government should also amend the CSOs and Charities Proclamation which has prevented CSOs and Charities from engaging in human rights and advocacy works. The Proclamation should be revised so that foreign and Ethiopian resident CSOs and DPOs could work on the promotion of the right to inclusive education of CWDs and involve in awareness raising campaigns to foster positive attitude towards CWDs.

Overall the government should undertake a systematic review of all existing legislations to incorporate rights recognised in the CRC, ACRWC and the CRPD to harmonise the already existing laws with new developments. In particular it is recommended that a comprehensive Children's Code to be adopted that contain a stand-alone provision on CWDs and explicitly extends the need to ensure the equalisation of opportunities for CWDs to inclusive education and expressly prohibits discrimination on basis of disability. The code should also stipulate expressly that refusal of reasonable accommodation constitutes disability based discrimination.⁴⁹⁵ In addition, the code should ensure accessibility of CWDs to public and private places and schools

⁴⁹⁴ FDRE Constitution, art 105.

⁴⁹⁵ Landmine Survivors Network (n 79 above) 40.

as required by the CRPD.⁴⁹⁶ The code should also use disability friendly terminologies when legislating for children with disabilities and avoid offensive terms such as handicapped or crippled to reflect the human-rights based approach to disability as embodied in the CRPD. The code will have to be reviewed in a regular basis to conform to subsequent developments.

5.3.2 The Policy Framework

Though adoption of policies, strategies and programs that mainstream issues of CWDs is one of the mechanisms for implementation of their rights, their effectiveness depends on many factors. The first step in the complex subject of inclusive education is conceptual clarity. Ethiopia does not promote a vision of general inclusive education (in the sense of all learners' needs, including those of CWDs, being met within regular classes).⁴⁹⁷ Moreover some of the policies are adopted a very long time ago which makes it obsolete. Such policies have to be regularly revised to incorporate subsequent developments and to harmonise them with principles that have developed ever since their adoption.

Educational strategies must be in line with Article 24 of the CRPD and expressly provide for inclusive education to CWDs. Additionally policies need to be cautious about the language used to describe PWD and should be revised to refrain from using the terms such as 'handicapped' and employ a terminology in line with the human-rights based model of disability. The policies also need to be revised to move from addressing disability solely from a rehabilitation, social welfare and charity-oriented perspective, which render these policy papers obsolete in light of the above mentioned contemporary models of disability and promote the ability, independence, empowerment and inclusion of PWDs in light of the human-rights based model of disability and in accordance with the CRPD. PWDs, including CWDs should also be closely consulted and actively involved in the preparation and implementation of these policies.

On the paradigmatic front, the first critical concern is the need to move away from a focus on changing the individual, to a focus on making the necessary changes to the school system, and eliminating the barriers that it imposes. Accordingly, aggressive campaigns must be launched to foster positive attitudes, at both professional and societal levels, in order to ensure true inclusion

⁴⁹⁶ CRPD, art 9.

⁴⁹⁷ The current applicable policies emphasise integrated and special education, which are based on the medical model.

and to get CWDs into mainstream schools. To this end the Government should strive to change attitudes and raise awareness towards children with disabilities through print and broadcast media and different forms of public mobilisation. For those CWDs who are already in school, it is crucial to make sure that both the physical accessibility of, quality of education, in those schools. Physical accessibility can be improved by ensuring that CWDs have access, on an equal basis with others, to the physical environment, to transportation, and to information and communications, by removing physical barriers posed by stairs, doorways, toilets, water taps, etc. Equally importantly, there is a need to ensure the adequate supply of qualified teachers and they should be encouraged to handle a higher range of diversity in their classrooms. To this end, teachers must be provided with more in depth training and support, in order to help them address CWDs unique learning needs. Simultaneously, comprehensive and timely disaggregated data on prevalence of disabilities need to be developed and made available to the stakeholders to provide indicators of need for this significantly marginalised group.

Last but not least the necessary awareness-raising, human resource development, infrastructural accommodations and material resources (e.g. assistive devices) must be budgeted for if we are to bring change on the status of inclusive education for CWDs in Ethiopia. Thus it is recommended that Government should set aside more budgets for special needs education and a study be conducted into the contextually appropriate funding model to be used in the country. To begin with it is important for the SNE Programme Strategy to be further refined to elaborate on important issues such as funding to bring it up to speed with current thinking and practice on the education of CWDs. Moreover different motivating measures, such as conditional cash transfers, could be considered in order to increase access to education of CWDs.

Finally, there is a need for a rapid implementation of the CRPD and the revision, accordingly, of domestic laws and policies, in order to bring them up to speed with the convention's provisions, in accordance with the implementation guidelines recommended by article 33 of the Convention. The Government should also report to the CRPD Committee in a timely manner and engage in a constructive dialogue during the examination of its report by the Committee.

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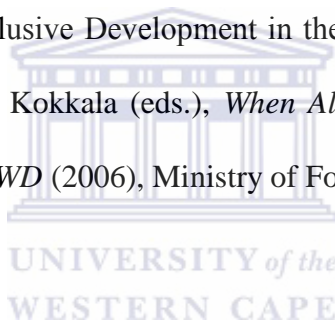
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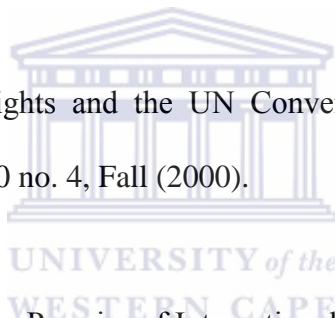
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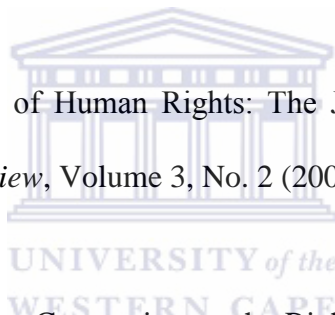
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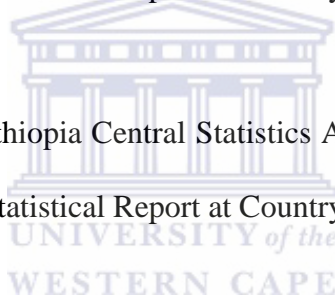
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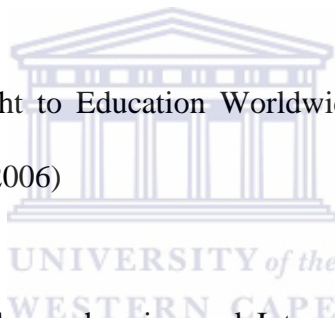
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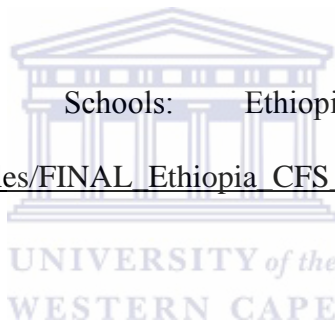
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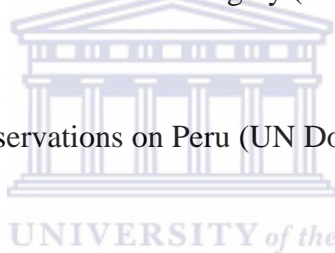
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