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The Right to Inclusive Education for Children with Learning Disabilities in Africa: Lessons from Kenya and Uganda

HRDA, The Master's Programme in Human Rights and
Democratisation in Africa

HUSSIENATOU MANJANG

THE RIGHT TO INCLUSIVE EDUCATION FOR CHILDREN
WITH LEARNING DISABILITIES IN AFRICA: LESSONS FROM
KENYA AND UGANDA

FOREWORD

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- Tucakov, Nikola, *The Machinery of Celebration: Mapping the Ceremonial Apparatus of Repulika Srpska*, Supervisor: Ivana Spasić, Belgrade University. European Regional Master's Programme in Democracy and Human Rights in South East Europe (ERMA), coordinated by University of Sarajevo and University of Bologna.

This publication includes the thesis *The Right to Inclusive Education for Children with Learning Disabilities in Africa: Lessons from Kenya and Uganda* written by Hussienatou Manjang and supervised by Elvis Fokala, University of Pretoria (South Africa).

BIOGRAPHY

Hussienatou Manjang is a global citizen hailing from The Gambia, with a wealth of experience having lived in 10 countries and moving 15 times. Hussienatou holds a Bachelor of Arts in Politics and International Relations from the University of Kent, Canterbury and a Master of Philosophy in Human Rights and Democratisation in Africa from the University of Pretoria. Hussienatou's research interests center on children's rights, with a particular passion for promoting access to and quality of education, and child participation.

ABSTRACT

Ensuring that children, including those with learning disabilities, have access to quality education is essential, and accessing inclusive education is a critical aspect of achieving this goal. Inclusive education strives to foster the participation, engagement and achievement of every learner in the classroom, regardless of their background or ability. It recognises that diversity is an asset and aims to create a supportive environment for all students. African state parties to the African Charter on the Rights and Welfare of the Child (ACRWC) and the United Nations Convention on the Rights of Persons with Disabilities (CRPD) have an obligation under articles 11(3) of the ACRWC and 24 of the CRPD to ensure the full realisation of inclusive education for children with learning disabilities. The study examines general trends in legislation and policy development across the continent. It draws lessons from the experience of Kenya and Uganda by interrogating the national legislation and policy, jurisprudence and field research to assess the extent to which inclusive education is being implemented. The study identifies barriers that children with learning disabilities face in accessing education, including institutional, informational, environmental and sociocultural barriers. The study proposes recommendations to strengthen the domestication of inclusive education; this includes the ratification of the Protocol to the African Charter on the Rights of Persons with Disabilities, the provision of adequate resources and infrastructure, developing flexible curriculums and disaggregated data collection.

Key words: learning disabilities, inclusive education, African Children's Charter, CRPD, implementation.

*To my parents, for your unconditional love and unwavering support.
You have taught me to dream without limits – I am eternally grateful.*

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ACRONYMS AND ABBREVIATIONS

ACRWC	African Charter on the Rights and Welfare of the Child
Africa Disability Protocol	The Protocol to the African Charter on Human and People's Rights on the Rights of Persons with Disabilities in Africa
AU	African Union
CA	Connects Autism
Commission	African Commission on Human and Peoples' Rights
Committee/ACERWC	African Committee of Experts on the Rights and Welfare of the Child
CRC	United Nations Convention on the Rights of the Child
CRPD	United Nations Convention on the Rights of Persons with Disabilities
CRPD Committee	UN Committee on the Rights of Persons with Disabilities
CSO	Civil society organisation
DSM-V	Diagnostic and Statistical Manual of Mental Disorders
KICD	Kenya Institute of Curriculum Development
MoE	Ministry of Education

MoES	Ministry of Education and Sports
NCDC	National Curriculum Development Centre
NGO	Non-governmental organisation
ORMS	Opinions Relative to Mainstreaming Scale
PDA	Persons with Disability Act
PWD	Persons with disabilities
SAC	Salvation Army Church
Salamanca Statement	Salamanca Statement and Framework for Action on Special Needs
SNE Framework	Special Needs Education Framework
SPIE	Sector Policy on Inclusive Education
SPLTD	Sector Policy for Learners and Trainees with Disabilities
UN	United Nations
UNICEF	United Nations International Children's Emergency Fund
UNESCO	United Nations Educational, Scientific and Cultural Organization
USAID	United States Agency for International Development
1995 Constitution	The Constitution of the Republic of Uganda, 1995
2010 Constitution	The Constitution of Kenya, 2010

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1.

INTRODUCTION

1.1 BACKGROUND

Children with learning disabilities belong to one of the most marginalised groups in Africa and globally.¹ According to the 2020 United Nations Educational, Scientific and Cultural Organization (UNESCO) Global Education Monitoring report on inclusion and education, children with learning disabilities are also subjected to social exclusion that is intensified due to their intersectional identities.² Pather, writing in 2019, holds the view that intersectional identities are a major deterrent to the welfare and enjoyment of the rights of children with learning disabilities, especially in the context of the right to education.³ Education for marginalised groups like children with learning disabilities is seen as a separate agenda,⁴ despite the protection of the right to inclusive education for children in several international human rights instruments such as the African Charter on the Rights and Welfare of the Child (ACRWC)⁵ and the United Nations (UN) Convention on the Rights of Persons with Disabilities (CRPD).⁶

¹ JA McKenzie, R McConkey and C Adnams, 'Intellectual disability in Africa: implications for research and service development' (2013) 35(20) *Disability and Rehabilitation* 1750.

² UNESCO, 'Global education monitoring report 2020: Inclusion and education: All means all' (UNESCO 2020) 15, 46.

³ S Pather, 'Confronting inclusive education in Africa since Salamanca' (2019) 23(7-8) *International Journal of Inclusive Education* 782, 789.

⁴ *ibid* 786.

⁵ African Charter on the Rights and Welfare of the Child (adopted 1 July 1990, entered into force 29 November 1999) (ACRWC).

⁶ Convention on the Rights of Persons with Disabilities (adopted 13 December 2006, entered into force 3 May 2008) 2515 UNTS 3 (CRPD).

Many African states, based on the strength of the ratification of the ACRWC and the CRPD, express the importance of equal opportunities for education for all children, irrespective of their creed, religion, culture and disability.⁷ Particularly, article 11(3) of the ACRWC and article 24 of the CRPD call on states parties to take appropriate measures to ensure an inclusive environment for all children concerning education. Unfortunately, this commitment does not translate to the reality on the ground for children with learning disabilities within the education system. In most cases, as will be analysed further in this dissertation, the approach to education is often to maintain a dual education system of segregated and mainstream institutions. Mainstream schools are generally designed to assume that every child within the classroom has the same learning and understanding ability.⁸ For instance, according to Abosi and the United States Agency for International Development (USAID) report on inclusive education in sub-Saharan Africa, there are two patterns of progression to the next grade; one is based on performance, and the other is an automatic promotion, both of which pose an issue for children with learning disabilities.⁹ This assumption causes children with learning disabilities to encounter discrimination under the existing education systems in Africa. Traditional and cultural perceptions of disability in Africa are generally negative and, as a result, contribute to the social acceptance of such behaviour towards persons with disabilities (PWDs).¹⁰

To address the growing concern of the insufficiency of the measures adopted at national levels and the plight of children with learning disabilities, the UN, through one of its agencies, the UNESCO, adopted the Salamanca Statement and Framework for Action on Special Needs (Salamanca Statement) in 1994.¹¹ The framework extensively considers the national experiences of the participating countries¹² and,

⁷ O Abosi, 'Educating children with learning disabilities in Africa' (2007) 22(3) Learning Disabilities Research & Practice 196, 197.

⁸ *ibid* 196.

⁹ *ibid*. See also United States Agency for International Development (USAID), 'Are we fulfilling our promises? Inclusive education in sub-Saharan Africa' (USAID 2020).

¹⁰ BR Ireri and others, 'Policy strategies for effective implementation of inclusive education in Kenya' (2020) 12(1) International Journal of Educational Administration and Policy Studies 28, 29.

¹¹ UNESCO, 'The Salamanca Statement and Framework for Action on Special Needs Education, the World Conference on Special Needs Education' (1994).

¹² 260 delegates from 92 countries were represented. African countries that participated include but not limited to Kenya, Uganda, South Africa and The Gambia.

in particular, the Standard Rules on the Equalization of Opportunities for Persons with Disabilities proposes guidelines to make education more inclusive and to protect the wellbeing of children with learning disabilities.¹³

A few years after the Salamanca Statement, in 1999, the ACRWC entered into force. Unlike the Salamanca Statement, the ACRWC is a binding treaty and, to date, has been ratified by 50 out of 54 African states.¹⁴ The ACRWC reflects a ‘meaningful attempt to address specific continental challenges and impress an African fingerprint that considers our continent’s social, economic, and cultural setup’.¹⁵ In a sense, it serves as an amplifier to the objectives of the Salamanca statement in Africa. Further, it expounds on the provisions dedicated to protecting the right to education presented under article 18 of the UN Convention on the Rights of the Child (CRC)¹⁶ through the inclusion of six new provisions.¹⁷ For instance, article 11(3) mandates state parties to explicitly take special measures in achieving the right to education and equal access for female, gifted and disadvantaged children; this ensures increased access and inclusion and are essential protections for the African child.

Concerning inclusive education in Kenya and Uganda, the African Committee of Experts on the Rights and Welfare of the Child (the Committee/ACERWC) have commented on the situation in both countries. In its Concluding Observations on Kenya’s second periodic report, the Committee notes the concern of discrimination against children with disabilities in accessing education,¹⁸ and ‘the lack of

¹³ UN General Assembly, ‘Standard Rules on the Equalization of Opportunities for Persons with Disabilities’ (1994).

¹⁴ A comprehensive table of ratification is available at African Committee of Experts on the Rights and Welfare of the Child (ACERWC), ‘Ratifications Table’ (ACERWC) <<https://www.acerwc.africa/en/member-states/ratifications>> accessed 13 August 2022.

¹⁵ BD Memzur, ‘The African Children’s Charter versus the UN Convention on the Rights of the Child: A zero-sum game?’ (2008) 23(1) South Africa Public Law Journal 1.

¹⁶ Convention on the Rights of the Child (adopted 20 November 1989, entered into force 2 September 1990) 1577 UNTS 3 (CRC).

¹⁷ TN Khoza, ‘The Sen-Nussbaum diagram of article 11(3) of the African Charter on the Rights and Welfare of the Child: Facilitating the relationship between access to education and development’ (2021) 21 African Human Rights Law Journal 11.

¹⁸ ACERWC, ‘Concluding observations and recommendations by the African Committee of Experts on the Rights and Welfare of the Child on the second periodic report of the Republic of Kenya on the status of the implementation of the African Charter on the Rights and Welfare of the Child’ (2020) para 14.

facilities to cater for the needs of children with mental disabilities'.¹⁹ Likewise, the Concluding Observations on Uganda's initial periodic report indicates the issue of the discrimination against children with disabilities and how it interferes with their right to education.²⁰ It also points out the need to pace the recruitment of more specialised teachers in institutions of learning.²¹ Thus, broadly, it is the emphasis of the importance of the application of a comprehensive right to education and the proper recruitment of special educators in institutions of learning that guide the objectives of this research, which as detailed below under 1.3, is to understand the barriers to the right to inclusive education in the national context in Africa, drawing lessons from the experiences in Kenya and Uganda.

1.2 PROBLEM STATEMENT

As indicated earlier, 50 member states of the African Union (AU) have ratified the ACRWC.²² Coincidentally, even though not the same states, an equal number of 50 African states have ratified the CRPD.²³ Thus establishing, to a greater extent, in the context of this dissertation, the recognition and acceptance of the rights of children with learning disabilities to access inclusive learning methods and institutions in Africa.

Despite ratifying the ACRWC and the CRPD, children with learning disabilities face obstacles in accessing and receiving inclusive education in most African countries²⁴ and particularly, as discussed later, in Kenya and Uganda. Legislation and policies have been developed in

¹⁹ ACERWC (n 18) para 50.

²⁰ ACERWC, 'Recommendations and observations sent to the government of the Republic of Uganda by the African Committee of Experts on the Rights and Welfare of the Child on the initial implementation report of the African Charter of the Rights and Welfare of the Child' (2010) 2.

²¹ *ibid* 5.

²² ACERWC, 'Ratifications Table' (n 14). The five countries that have not ratified the ACRWC are Morocco, Sahrawi Arab Democratic Republic, Somalia, South Sudan and Tunisia.

²³ Centre for Human Rights, 'Press statement: Centre for Human Rights calls on African states to speed up ratification of the African Disability Protocol' (*Centre for Human Rights*, 8 March 2022) <<https://www.chr.up.ac.za/press-statements/3049-press-statement-centre-for-human-rights-calls-on-african-states-to-speed-up-ratification-of-the-african-disability-protocol>> accessed 5 August 2022. See also UN Treaty Body Database, 'Ratification status for CRPD' (OHCHR) <https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?Treaty=CRPD&Lang=en> accessed 13 August 2022.

²⁴ M Ainscow, S Roger and M Best, 'The Salamanca Statement: 25 years on' (2019) 23(7-8) *International Journal of Inclusive Education* 671, 672.

Kenya and Uganda to uphold their commitments to these instruments, particularly around the domestication of the right to education for children with learning disabilities. The Constitution of Kenya, 2010 (2010 Constitution) includes a provision which safeguards the right to education for all Kenyans with disabilities.²⁵ In addition to constitutional safeguards, the Ministry of Education (MoE) recently adopted the 2018 Sector Policy for Learners and Trainees with Disabilities (SPLTD), as discussed further in chapter three of this dissertation, which expands the category of children with disabilities by including learning disabilities as a stand-alone category.²⁶ Uganda, like Kenya, includes the right to education under articles 30 and 34 of the Constitution of the Republic of Uganda, 1995 (1995 Constitution).²⁷ In addition, the Ugandan government has enacted the Persons with Disability Act (PDA) in 2006, which provides explicitly for inclusive education and emphasises the importance of providing training for special needs education for adolescents and conducting research in disability-related areas.²⁸

However, the implementation of these laws and policies, as discussed further in the subsequent chapters, in Kenya and Uganda remains an issue that interferes with the right to inclusive education for children with disabilities. Some of the contributing factors to the lethargic pace of implementing national legislation and other measures in Kenya and Uganda is attributed to societal constructs on the perception of disability. For example, when there is a child with a disability in a family, studies from Kenya show that family members tend to '[describe] the child as having a deficit (lack of something) to treating them as different, but not necessarily regarding them as disabled'.²⁹ Families prefer to ignore the disability of the child rather than acknowledging it and accommodating them adequately. Thus, when implementing a framework for inclusive education, it is essential to shift from the normative special education

²⁵ The Constitution of Kenya, 2010.

²⁶ UNESCO, 'Kenya – Inclusion' (UNESCO) <<https://education-profiles.org/sub-saharan-africa/kenya/~inclusion#Laws.%20Plans.%20Policies%20and%20Programmes>> accessed 16 August 2022.

²⁷ The Constitution of the Republic of Uganda, 1995.

²⁸ K Sheehy, GW Kasule and L Chamberlain, 'Ugandan teachers epistemological beliefs and child-led research: Implications for developing inclusive educational practice' (2021) 68(4) *International Journal of Disability: Development and Education* 600, 601.

²⁹ F Bannink, R Nalugya and G van Hove, "'They give him a chance' - Parents' perspectives on disability and inclusive primary education in Uganda' (2020) 67(4) *International Journal of Disability: Development and Education* 357, 359.

tradition of establishing 'specialised support in specialised settings for children specifically with special educational needs and disabilities'.³⁰

Beyond the enactment of the legislation, it is imperative to also focus on sociological underpinnings to understand the effect of society in the development of specific barriers to accessing or achieving inclusive education.³¹ These sentiments are also echoed in the Salamanca Statement, which stipulates that 'those with special needs must have access to regular schools which should accommodate them within a child-centred pedagogy capable of meeting these needs'.³² Therefore, inspiration will be drawn from the Salamanca Statement to understand the extent of state obligations concerning the right to inclusive education under the ACRWC and the CRPD.

1.2.1 Significance of problem explained

The significance of this study is to raise awareness and serve as a tool of advocacy to push for the full realisation of the right to inclusive education. This study aims to analyse the extent to which Kenya and Uganda have adhered to their obligations under the ACRWC and the CRPD and how these instruments can be used complementarily to achieve inclusive education. The study offers insights and discusses the barriers and missed opportunities to ensure the right to inclusive education. It uses Kenya and Uganda to point to best practices on the continent and how to strengthen these measures so that the right to inclusive education for children with learning disabilities can be truly recognised, promoted and implemented.

1.3 RESEARCH OBJECTIVES

This study is guided by the following objectives:

- To evaluate the limitations to realising the right to inclusive education for children with learning disabilities in Africa, focusing on Kenya and Uganda.
- To analyse state obligations under the ACRWC and the CRPD concerning children with learning disabilities.

³⁰ Pather (n 3) 783.

³¹ *ibid* 784.

³² G Lindsay, 'Inclusive education: a critical perspective' (2003) 30(1) *British Journal of Special Education* 3.

- To provide recommendations to bridge existing disparities in the right to inclusive education and ensure the implementation of policies in Kenya and Uganda.

1.4 RESEARCH QUESTIONS

The leading research question in this study is: To what extent have state parties to the ACRWC implemented article 11(3) on inclusive education for children with learning disabilities?

The sub-questions are:

1. What are the approaches to inclusive education for children with learning disabilities in Kenya and Uganda?
2. What are the barriers and missed opportunities to realising inclusive education in Africa?
3. What are the best practices for mitigating the barriers to inclusive education in Africa?

1.5 LITERATURE REVIEW

Academic discourse and advocacy on the problematic implementation of the right to inclusive education for children with learning in Africa is growing. However, the paucity of research with practical recommendations to improve the implementation of inclusive education in Africa, particularly in Kenya and Uganda, is still extremely limited. As will be seen in the following subsections of this dissertation, several African scholars have contributed to the literature on the right to inclusive education on the continent. Therefore, the purpose of this research is not to discount the importance and contributing substance of existing literature but rather to contribute to the academic discourse and ascertain the level at which Kenya and Uganda have implemented an inclusive approach to education specifically for children with learning disabilities.

1.5.1 *Learning disabilities and inclusive education in Africa*

As Abosi posits, the structure of the education system and schools in Africa contributes to the creation of learning difficulties and disabilities.³³ The article discusses two issues, the process of progressing from one grade to another and the overpopulation of classrooms. Advancing to a higher grade in African schools is either based on your performance or an ‘automatic’ progression. In the former situation, where progression is dependent on performance, children with learning disabilities often repeatedly fail, which causes frustration, demoralisation and repeating the class.³⁴ This means that the child stays back to be with younger classmates, eventually leading to them dropping out of school. However, in the latter scenario with automatic progression, the needs of the child with learning disabilities often go ignored, which also poses an issue.³⁵ The other problem is that the average classroom in an African public school is congested with up to 40 or more students per teacher. The large classroom makes it difficult to understand all the students’ needs. In addition to the congestion of classrooms, there is limited training for teachers to understand learning disabilities and provide adequate assistance and support to students.³⁶ Abosi further expounds on how the situation can be improved by referring to the positive developments in policy frameworks in Kenya and Uganda regarding special education. Most importantly, Abosi posits a definition of learning disabilities that will be used in this study; it is defined as ‘a generic term referring to a heterogeneous group of disorders manifested by significant difficulties in the acquisition and use of listening, speaking, reading, writing, reasoning, or mathematical abilities’.³⁷

Abosi’s definition aligns with the recognised definition of learning disabilities provided under the Diagnostic and Statistical Manual of Mental Disorders (DSM-V). The DSM-V considers learning disabilities to be a type of neurodevelopmental disorder which causes an impairment in ‘reading accuracy, reading rate or fluency, and reading comprehension’,³⁸ ‘written expression ... spelling accuracy, grammar and

³³ Abosi (n 7) 196.

³⁴ *ibid* 197.

³⁵ *ibid* 198.

³⁶ *ibid*.

³⁷ *ibid*.

³⁸ American Psychiatric Association, *Diagnostic and Statistical Manual of Mental Disorders* (5th edn, American Psychiatric Association 2013) xiv.

punctuation accuracy, clarity or organization of written expression’;³⁹ and in mathematics, ‘memorization of arithmetic acts, accurate or fluent calculation, [or] accurate math reasoning’.⁴⁰ This research will adopt the definition Abosi posits as it situates learning disabilities within the African context.

McKenzie, McConkey and Adnams discuss traditional perceptions of learning disabilities in African society and posit that this issue has not been explored nor addressed adequately.⁴¹ The article points to Kisangi’s studies on Tanzanian proverbs concerning the negative attitudes towards PWDs. Based on this study, it is evident that language used to describe PWDs has fearful undertones, which translates into the social acceptance of how to treat PWDs and contributes to their lived experiences. The paper then discusses the importance of education for children with learning disabilities and how vital it is to promoting independence and participation in the community. Lastly, the article also highlights how there has been development in policy across the continent, but in most African countries, the approach is establishing special schools as the only response to children with learning disabilities.⁴²

1.5.2 Inclusive education in Kenya

Elder analyses Kenya’s shift towards special education and refers to relevant domestic legislation and inclusive education policies.⁴³ It highlights the 2010 Constitution, which has a specific provision providing the right to education for all PWDs. Furthermore, it touches on the international commitments of Kenya and the domestication of different instruments which protect PWDs, but it does not mention the ACRWC.⁴⁴ The article also discusses the position of the MoE concerning inclusive education and acknowledges that free primary and secondary school is a fundamental right of all. It provides a clear definition of inclusive education per the 2009 UNESCO’s Policy Guidelines on Inclusion in Education as:⁴⁵

³⁹ American Psychiatric Association (n 38).

⁴⁰ *ibid.*

⁴¹ McKenzie, McConkey and Adnams (n 1).

⁴² *ibid* 1751.

⁴³ BC Elder, ‘Right to inclusive education for students with disabilities in Kenya’ (2015) 18(1) *Journal of International Special Needs Education* 18.

⁴⁴ *ibid* 18.

⁴⁵ Elder (n 43) 19.

A process of strengthening the capacity of the education system to reach out to all learners ... As an overall principle, it should guide all education policies and practices, starting from the fact that education is a basic human right and the foundation for a more just and equal society.

Elder touches on the intersectional identities of PWDs and other barriers that exist which are specific to the Kenyan context.

Kiru introduces an analysis of Kenya's expansion of education following colonialism to recent times with a focus on policy initiatives in the national education system.⁴⁶ He discusses the development of an Institute of Special Education under the MoE in 1986 and the positive developments as a result of it, including the Persons with Disabilities Act and the National Council for Persons with Disabilities, which have focused on the inclusion of PWDs.⁴⁷ In addition, the paper points to the Kenyan government's reintroduction of free primary education in 2003 to enhance educational opportunities for all children. However, by 2016, this positive development has led to challenges in teacher-student ratios, with many teachers being overburdened by the congestion of classrooms.⁴⁸ The article then focuses on special needs education and mentions the 2009 Special Needs Education (SNE) Framework to ensure children with disabilities access such services. This policy is commendable as it includes several learning disabilities. It also touches on the general difficulties faced by children with learning disabilities and the inadequacy of the special units and special schools in comparison to the number of children with diagnosed learning disabilities.⁴⁹

1.5.3 Inclusive education in Uganda

Bannink, Nalugya and van Hove discusses how ratification and domestication of international instruments that address the right to education are not reflected in the reality of the education system in Uganda.⁵⁰ The study explored the attitudes of Ugandan teachers and parents in the implementation of child-centred approaches to inclusive

⁴⁶ EW Kiru, 'Special education in Kenya' (2019) 54(3) *Intervention in School and Clinic* 181, 183.

⁴⁷ *ibid.*

⁴⁸ Kiru (n 46) 182.

⁴⁹ *ibid* 184.

⁵⁰ Bannink, Nalugya and van Hove (n 29).

education. It touched on patterns in the Ugandan education system that conflict with teachers' aspirations to ensure equal education. It further highlighted how there is no direct translation of disabled into local dialect and provided the closest examples to highlight the negative connotations when referring to children with disabilities. It calls for the importance of developing local understandings of education, inclusivity and disability. Lastly, the study's results highlight parents' challenges in accessing education services.

Sheehy, Kasule and Chamberlain address the developments made in Uganda since the ratification of the CRC in 1990.⁵¹ It mainly focuses on the achievements under the 2006 PDA and the National Curriculum Development Centre (NCDC). The PDA provides for the prohibition against disabled learners in seeking education, and the NCDC provides for a curriculum that is inclusive, child-centred and social constructivist pedagogy. The article discusses teachers' challenges in upholding inclusive education; classes are often overcrowded. According to a study by Ojok and Wormnæs, 40% of teachers taught classrooms of 50-100 students.

Ojok and Wormnæs conducted a study in a rural region of Uganda to understand the attitudes toward children with intellectual disabilities.⁵² The study does not explicitly define intellectual disabilities; however, it is worth noting that the term intellectual disability is used in place of 'special needs children'.⁵³ It begins with an introduction to how essential teachers' attitudes are toward children with learning disabilities, as it is crucial to implement an inclusive education framework effectively. The article highlights how data from several countries support the claims that teachers are not as positive concerning children with learning disabilities as other disabilities. The study results were promising as many teachers who participated expressed a willingness to teach children with learning disabilities. It also mentions the positive advancements in Uganda to realise the right to education.

Upon conducting a literature review, it is evident that the literature addressing the right to inclusive education with a focus on learning

⁵¹ Sheehy, Kasule and Chamberlain (n 28).

⁵² P Ojok and S Wormnæs, 'Inclusion of pupils with intellectual disabilities: primary school teachers' attitudes and willingness in a rural area in Uganda' (2013) 17(9) *International Journal of Inclusive Education* 1003.

⁵³ *ibid* 1008.

disabilities is scarce and scattered. Elder⁵⁴ and Ireri and others⁵⁵ attempt to address the implementation of inclusive education; however, the substance is not comprehensive enough as most of the focus is on physical accessibility. Further, most of the literature analyses state obligations under the UN human rights system, namely the CRC and the CRPD; western scholars also dominate the discourse of inclusive education. The analysis provided by McKenzie, McConkey and Adnams⁵⁶ is relevant; however, considering Uganda and Kenya are both parties to the ACRWC, it is crucial to provide an analysis contextualised to the African reality.

1.6 METHODOLOGY

This study will employ a doctrinal research method of approach, relying primarily on desk-based research. The desk-based research will mainly analyse existing literature and quantitative and qualitative data concerning the challenges faced in realising the right to inclusive education in a comparative method will be applied. This combined method is necessary to realise the objectives of this research because it provides the baseline information to understand the extent to which inclusive education has been implemented in Africa concerning children with learning disabilities. It also is beneficial in providing a structure with clear definitions and an understanding of the law.

The primary sources consulted will be the 1995 Constitution of Uganda, the 2010 Constitution of Kenya, and statutes such as the 2006 Uganda PDA and the 2009 Kenya SNE Framework. This study will also consult the ACRWC. The secondary sources that will be consulted are journal articles, books, government and other reports, the normative frameworks by human rights institutions and the internet. The doctrinal research methodology guides 'interpretive qualitative analysis' by focusing on case law, legislation and legal documents.⁵⁷

The theory that will ground this research is the human rights-based approach. This approach is centred on identifying and analysing inequalities and providing solutions to reduce discrimination with an

⁵⁴ Elder (n 43).

⁵⁵ Ireri and others (n 10).

⁵⁶ McKenzie, McConkey and Adnams (n 1).

⁵⁷ P Chynoweth, 'Legal research' in A Knight and L Ruddock (eds), *Advance research methods in the built Environment* (Blackwell Publishing Ltd 2008) 30.

understanding of human rights.⁵⁸ This study focuses on the right to inclusive education for children with learning disabilities, the barriers faced in the identified countries and how to mitigate these factors under the African human rights system.

1.7 LIMITATION OF THE STUDY

The major limitation of this study is that it is not entirely focused on the right to education as stipulated under article 11 of the ACRWC. Instead, the research focuses on the right to inclusive education for children with learning disabilities in Africa, with focus on Kenya and Uganda as exemplars. The emphasis on inclusive education is necessary because of the importance of implementing this approach and to accommodate children with learning disabilities, in institutions of learning and within the broader framework of systems of education in varied African states. The study is also limited due to time constraints which affect the ability to obtain ethical clearance to conduct interviews.

1.8 STRUCTURE

This mini dissertation is comprised of five chapters. The first chapter will provide a background and introduction to the topic, discuss the research problem and objectives of this study, indicate the research questions guiding this study and provide definitions of learning disabilities and inclusive education as it relates to children in Africa. Chapter two explores the normative framework for understanding inclusive education in Africa concerning article 11(3) of the ACRWC and article 24 of the CRPD. In doing so, it highlights constitutional protections, legislation and national policies addressing inclusive education for children with learning disabilities. The third chapter points to experiences in Kenya and Uganda to realise the right to inclusive education and analyse existing approaches to inclusive education. Chapter four explores the barriers and missed opportunities to realising the right to education in Africa, and uses Kenya and Uganda as exemplars. The final chapter provides recommendations on ensuring a positive environment for children with learning disabilities in Africa and a conclusion of the research.

⁵⁸ T Rose, 'A human rights-based approach to journalism: Ghana' (2013) 19(1) *Journal of International Communication* 85, 87.

2.

THE UNDERPINNING OF INCLUSIVE EDUCATION FOR
CHILDREN WITH LEARNING DISABILITIES IN AFRICA

2.1 INTRODUCTION

This chapter aims to interrogate the foundation of inclusive education for children with learning disabilities in Africa. It first explores the African children's rights system, which comprises the ACRWC and its independent monitoring body, the Committee. It considers the complementing relation with the African Commission on Human and Peoples' Rights (the Commission) and other bodies under the AU human rights system concerning the right to inclusive education. The primary focus, however, is on state obligations under article 11(3) of the ACRWC. Also, it discusses article 24 of the CRPD and its General Comment on inclusive education for children with learning disabilities. The consideration of the CRPD, as indicated in chapter one of this dissertation, is based on its importance and recognition as the first comprehensive international human rights treaty on the rights of people with disabilities. In the African context, this chapter also acknowledges the adoption of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Persons with Disabilities (Africa Disability Protocol) in Africa by the AU in January 2018. Even though this instrument is yet to come into force, its strength on the importance of ensuring the right of children with learning disabilities will be discussed as a way of encouraging its ratification by the AU Member States.⁵⁹ Finally, this chapter explores general trends in legislation and policy across the continent concerning inclusive education for children with

⁵⁹ Worth noting, the CRPD enjoys a complimentary relationship in the African human rights system with regards to the protection of the rights of children with disabilities in Africa.

learning disabilities to illustrate the African reality and the sufficiency of regional and national laws and policies.

2.2 AFRICAN HUMAN RIGHTS SYSTEM

The ACRWC provides the foundational basis of the obligation of state parties to promote and protect the right to education for all children in Africa, including children with disabilities, under article 11.⁶⁰ Sub-article (3) conveys the obligation of state parties to attain the full realisation of the right to education and can be interpreted as a provision for inclusive education.⁶¹

State Parties to the present Charter shall take all appropriate measures with view to achieving the full realisation of this right and shall in particular ... (e) take special measures in respect of female, gifted and disadvantaged children, to ensure equal access to education for all sections of the community.

Article 11(3) highlights a distinctive element of the right to education and mandates state parties to undertake adequate measures concerning female, disadvantaged and gifted children. This provision attempts to highlight the social disparity which causes a barrier to receive equal education for children,⁶² and contextualises the reality of education in Africa and how it can be mitigated through state action.⁶³ Children with disabilities face different obstacles in accessing education; however, for children with learning disabilities, the rates of enrolment are meagre in contrast to children with other kinds of disabilities.⁶⁴ As a result of the intersectional identities of children with learning disabilities, the three categories stipulated under article 11(3), disadvantaged, gifted and female, provide an obligation on state parties to protect them. In the African context, children with learning disabilities are considered a disadvantaged group, and this will be explored further in chapter four.

⁶⁰ ACERWC, 'Concept note on the rights of children with disabilities: Duty to protect, respect, promote and fulfil' (2012) para 27.

⁶¹ African Charter on the Rights and Welfare of the Child (adopted 1 July 1990, entered into force 29 November 1999).

⁶² KD Beiter, 'Is the age of human rights really over? the right to education in Africa – Domesticization, human rights-based development, and extraterritorial state obligations' (2017) 49(1) *Georgetown Journal of International Law* 9, 23.

⁶³ M Gose, *The African Charter on the Rights and Welfare of the Child* (Child Community Law Centre 2002) 116.

⁶⁴ C Okyere, HM Aldersey and R Lysaght, 'The experiences of teachers of children with intellectual and developmental disabilities in inclusive schools in Accra, Ghana' (2019) 8 *Journal of Research in Special Educational Needs* 1.

Although there is no use of the term ‘inclusive education’ in article 11(3), the Committee, in its General Comment 5 on article 1, which covers state party obligations under the ACRWC, has further expanded the normative basis of the right to education by clarifying the basic requirements of legislative measures concerning the right to education. More specifically, it amplified its call for ‘[s]tate [p]arties [to] ensure that public and private educational institutions provide inclusive, quality education of a comparable standard’.⁶⁵ This interpretative expansion on the right to education is inclusive, critical and needed for a continent with a growing number of disconsolate states to the realities faced by children with learning disabilities in learning institutions.

The ACRWC provides the foundation for children’s protection within the African human rights system. Still, because of complementing relationships under this system, inspiration can be drawn from other bodies such as the Commission and AU Assembly. The Committee has considered and applied interpretations of the Commission in the past; for example, the Committee adopted the principle of ‘unreasonable delay’ when considering the requirement of exhaustion of domestic remedies under the ACRWC.⁶⁶ It can then be assumed that the Committee will rely on Resolution 346 published by the Commission in 2016 to expand its interpretation of the right to education. The resolution emphasises that though there are legal frameworks to ensure the protection of the right to education, evidence shows that children with disabilities are not afforded an equal opportunity to education.⁶⁷ The Commission calls on state parties to ensure the full realisation of the right to education, including:⁶⁸

[T]he provision of high-quality and appropriate educational programmes that serve the needs of all sectors of society ... the provision of reasonable accommodation measures for children with disabilities ... to ensure inclusive quality education on an equal basis with other members of their communities consistent with the goal of full inclusion.

⁶⁵ ACERWC, ‘General Comment 5 on state party obligations under the African Charter on the Rights and Welfare of the Child (article 1) and systems strengthening for child protection’ (2018) 29.

⁶⁶ F Viljoen, *International human rights law in Africa* (2nd edn, OUP 2012) 403.

⁶⁷ African Commission on Human and Peoples’ Rights, ‘Resolution 346 on the right to education in Africa’ (2016).

⁶⁸ *ibid.*

The mention of reasonable accommodation in this resolution indicates the responsibility of state parties to consider instituting measures to adequately respond to the individual needs of children with learning disabilities to enable them to attend mainstream schools. Suppose there is any difficulty in employing these special measures as stipulated under article 11(3); reasonable accommodation can contribute to creating an inclusive approach to education to the greatest extent possible. Therefore, this resolution, read with General Comment 5 and article 11(3), provides for inclusive education. This understanding can be utilised to assist children with learning disabilities in reaching their full potential.

Furthermore, aspiration 6 of Africa's Agenda for Children 2040 adopted by the AU Assembly in 2016 stipulates that:⁶⁹

Children with learning, mental and physical impairments are included and given the necessary support to complete primary and secondary school; as far as possible, the principle of inclusive education is fully implemented.

This aspiration goes even further by mentioning children with learning impairments in the context of the importance of inclusive education. The significance of the mention of children is emphasised here, considering the ACRWC is the only child-specific legal regional tool protecting African children and can be used to hold state parties accountable for failure to fulfil obligations. Therefore, this aspiration can further complement article 11(3) of the ACRWC, which arguably provides for the right to inclusive education for children with learning disabilities.

It must be noted that there is a lack of a regional normative instrument guiding the protection of children with disabilities in Africa; the provisions on disability are scattered across different instruments or specific frameworks that address the needs of marginalised groups like children, where there is an intersection of disability such article 11 of the ACRWC.⁷⁰ The Africa Disability Protocol is yet to enter into force following article 28, which requires 15 ratifications. Nonetheless, if entered into force, article 16 stipulates the right to education and offers

⁶⁹ African Union Assembly, 'Africa's agenda for children 2040' 13.

⁷⁰ LO Oyaro, 'Africa at crossroads: The United Nations Convention on the Rights of Persons with Disabilities' (2015) 30(2) *American University International Law Review* 347, 354.

children with disabilities a critical legal tool to safeguard their right to inclusive education against state parties that fail to fulfil obligations under this provision.⁷¹

However, as noted in chapter one, African countries have ratified the CRPD, which serves as a disability-specific framework. The following section will analyse article 24 regarding its complementarity with article 11(3) of the ACRWC with regards to the right to inclusive education for children with disabilities.

2.3 UN CONVENTION ON THE RIGHTS OF PERSONS OF DISABILITIES

As enshrined under article 24 of the CRPD, state parties are required to ‘ensure an inclusive education system at all levels’.⁷² The UN Committee on the Rights of Persons with Disabilities (CRPD Committee) provides an extensive interpretation of article 24 in General Comment 4, which posits that inclusive education is fundamental in ensuring all children thrive in education, including learners with disabilities.⁷³ It emphasises that the best approach to inclusive education is through the mainstream education system rather than establishing special schools.⁷⁴ According to international law, the right to education generally is considered an economic, social and cultural right; therefore, the right to inclusive education must be progressively realised.⁷⁵ Despite this, the General Comment bolsters the importance of state parties ‘expeditiously and effectively’ ensuring the full realisation of article 24 and further notes that state parties should shift from having two systems of education to achieving progressive realisation.⁷⁶ This is crucial considering the trends that will be explored in the next section highlight some practices of African countries to maintain two systems. In line with this, the General

⁷¹ Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Persons with Disabilities in Africa (adopted 29 January 2018) <<https://au.int/en/treaties/protocol-african-charter-human-and-peoples-rights-persons-disabilities-africa>> accessed 14 August 2022.

⁷² UN Convention on the Rights of Persons with Disabilities (adopted 13 December 2006, entered into force 3 May 2008) 2515 UNTS 3 (CRPD).

⁷³ CRPD Committee, ‘General Comment 4 on article 24: Right to inclusive education’ (25 November 2016) UN Doc CRPD/C/GC/4 para 2.

⁷⁴ *ibid* para 39.

⁷⁵ B Byrne, ‘How inclusive is the right to inclusive education? An assessment of the UN Convention on the Rights of Persons with Disabilities’ (2019) 26(3) *International Journal of Inclusive Education* 301, 304.

⁷⁶ CRPD Committee, ‘General Comment 4’ (n 73) para 40.

Comment acknowledges that there has been development in legislation and policies of state parties to attain inclusive education; however, most of these measures pertain to establishing segregated schools, further perpetuating stigma towards children with learning disabilities and contributing to the denial of the right to inclusive education.⁷⁷

One of the most significant elements of the General Comment is the distinction made by the CRPD Committee between exclusion, segregation, integration and inclusion:⁷⁸

Exclusion occurs when students are directly or indirectly prevented from or denied access to education in any form ... Segregation occurs when the education of students with disabilities is provided in separate environments designed ... to respond to particular ... impairments in isolation from students without disabilities. Integration is a process of placing persons with disabilities in existing mainstream educational institutions ... [if they] can adjust to the standardised requirements of such institutions ... Inclusion involves a process of 'systemic reform embodying changes and modifications in content, teaching methods, approaches, structures and strategies in education ... to provide all students ... with an equitable learning experience and environment.

This excerpt highlights how other approaches to implementing inclusive education do not necessarily constitute the essence of inclusivity. For example, the practice of some African countries, as will be discussed in the following section, to sustain segregated schools as a way of enforcing the right to inclusive education for children with learning disabilities is inadequate and inappropriate. The General Comment outlines that the objective of an inclusive education system is to ensure children reach their full potential and are equipped with the knowledge and tools to participate in society effectively.⁷⁹ The elaboration in the General Comment provides the understanding to state parties of what is required when developing and implementing inclusive education. Based on the analysis of article 11(3) of the ACRWC in section 2.2, complimented by this explanation of article 24 of the CRPD, the following section will examine the trends in legislation and policy frameworks in Africa to see the extent to which state parties fulfil their obligations under these rights concerning children with learning disabilities.

⁷⁷ CRPD Committee, 'General Comment 4' (n 73) para 33.

⁷⁸ *ibid* para 11.

⁷⁹ *ibid* para 10.

2.4 GENERAL TRENDS OF IMPLEMENTING INCLUSIVE EDUCATION IN AFRICA

The USAID's 2020 report on inclusive education in sub-Saharan Africa found that 42% of countries⁸⁰ have enacted policies for inclusive education. Some of these countries include Angola, Botswana, Ghana, Lesotho, Liberia, Mauritius, Namibia, Nigeria, Rwanda, Seychelles, South Sudan, Tanzania, Zambia and Zimbabwe.⁸¹ The report, however, highlights how national policies for inclusive education are at different phases of implementation in these respective countries.⁸² In some countries, there is a tendency to use the terminology 'special needs' when referring to education for children with learning disabilities, despite the historical context of this term being associated with segregated education.⁸³ Nonetheless, there are generally two trends of implementing inclusive education in Africa, the first is to include education under disability-specific legislation, and the second is to include provisions for children with disabilities under education legislation.⁸⁴

In addition to these legislative measures, non-state actors like non-governmental organisations (NGOs) and civil society organisations (CSOs) engage in advocacy and other strategies to ensure the implementation of inclusive education for children with learning disabilities. Generally, they work at the community level to improve conditions and hold states accountable.⁸⁵

2.4.1 Domestic laws and policies

Several countries in Africa have made considerable development in inclusive education through legislative measures; the cases that will be highlighted are Malawi, Namibia and Ghana. In 2005, the Malawi MoE implemented an Inclusive Education Advocacy Program,

⁸⁰ UNESCO highlights Angola, Ethiopia, Ghana, Kenya, Malawi, Nigeria, South Africa and Tanzania among the 42%; See UNESCO, 'Global education monitoring report 2020: Inclusion and education: All means all' (UNESCO 2020) 39, 40.

⁸¹ United States Agency for International Development (USAID), 'Are we fulfilling our promises? Inclusive education in sub-Saharan Africa' (USAID 2020) 2.

⁸² *ibid* 6.

⁸³ *ibid*.

⁸⁴ *ibid*.

⁸⁵ Y Miller-Grandvaux, M Welmond and J Wolf, 'Evolving partnerships: The role of NGOs in basic education in Africa' (USAID and Bureau for Africa, Office of Sustainable Development 2002) 2.

and the objectives were three-fold: ‘to increase access to schooling for young people with disabilities ... improve the quality of special needs education in regular schools and assess ... and counsel young people with disabilities’.⁸⁶ Through this programme, different activities took place in several regions of the country, which ultimately comprised community sensitisation concerning the rights of PWDs.⁸⁷ These efforts yielded positive results as inclusive education methods were taught to teachers, and advocacy groups were trained to develop infrastructure to accommodate children with learning disabilities in classrooms and communities. Most importantly, assessments were conducted in these communities, and children with learning difficulties were identified and also able to access these services.⁸⁸

However, as indicated in the initial and second periodic report to the CRPD Committee, Malawi continues to adopt a dual approach to inclusive education, wherein the establishment of special schools is still upheld for children with more severe disabilities.⁸⁹ In the mainstream education system, the implementation of inclusive education is supported by ‘resource rooms’, which is a space for students with disabilities to attain extra support while still being able to be part of the main classroom.⁹⁰ In spite of these efforts, in 2017, it was found that the number of resource centres across the country was significantly low; Malawi has an estimate of 1,100 special needs teachers countrywide to assist roughly 93,502 learners with special education needs.⁹¹ The scarcity of these special measures indicates that they cannot significantly impact national and international commitments to ensuring inclusive education. In addition, in the concluding observations of the CRPD Committee, one of the recommendations to Malawi was to ‘implement the National Inclusive Education Strategy of 2016 and ensure the availability of teachers trained to serve children with disabilities in all districts of the country’.⁹² The

⁸⁶ A Chitiyo and CG Dzenga, ‘Special and inclusive education in Southern Africa’ (2021) 1(1) *Journal of Special Education Preparation* 55, 57.

⁸⁷ *ibid.*

⁸⁸ *ibid.* 57.

⁸⁹ CRPD Committee, ‘Combined initial and second periodic reports submitted by Malawi under Article 35 of the Convention’ (8 March 2019) UN Doc CRPD/C/MWI/1-2 para 173.

⁹⁰ *ibid.*, para 172.

⁹¹ *ibid.*

⁹² ACERWC, ‘Concluding observations and recommendations on the initial report of the Republic of Malawi on the status of implementation of the African Charter on the Rights and Welfare of the Child’ (2016) para 27.

demand for inclusive education is high in Malawi, but this demand is not being met; a significant shift from special needs education to inclusive education is necessary to ensure the right to inclusive education for children with learning disabilities is meaningfully upheld.⁹³

Namibia offers inclusive education in several ways, ranging from ‘special’ schools, partial inclusion and mainstreaming to full inclusion. It is considered amongst the African countries that have a high education expenditure.⁹⁴ In 2013, the MoE instituted the Sector Policy on Inclusive Education (SPIE), intending to provide all children with the same opportunity to education in the least restrictive setting and ensure accessibility to such facilities. In addition to developing SPIE, the government continue to promote national teacher training workshops. The objectives of these workshops are to emphasise and facilitate the integration of inclusive education into the curriculum across the country.⁹⁵ The Committee has appreciated the efforts of Namibia regarding inclusive education for children with disabilities and has recommended that these measures continue to be strengthened; when inclusive education is being implemented, it should be guided by the individual needs of all children and accommodate specific needs through constant evaluation of the curriculum to assess and mitigate challenges faced by children with disabilities.⁹⁶

Although Namibia has very comprehensive inclusive education frameworks, a study conducted by the MoE of Namibia and United Nations International Children’s Emergency Fund (UNICEF) found that some inclusive schools do not adhere to the principle of full inclusion stipulated in SPIE, which calls for all children to be educated in the mainstream classroom. The study also found that children with learning disabilities enrolled in inclusive schools face many daily challenges. To further support this claim, teachers indicate that there have been no changes regarding teacher training, materials or facilities; the only real difference has been a performative re-naming of schools to

⁹³ ACERWC (n 92) para 175.

⁹⁴ Chitiyo and Dzenga (n 86) 58.

⁹⁵ *ibid* 60.

⁹⁶ ACERWC, ‘Concluding observations and recommendations on the Republic of Namibia Report on the status of implementation of the African Charter on the Rights and Welfare of the Child’ (2015) para 38.

reflect inclusivity.⁹⁷ In addition to this, teachers expressed concern over poor teacher-to-student ratio, causing them to be overwhelmed and making it difficult to adequately meet and assess the individual need of children with disabilities within the classroom.⁹⁸

The government of Ghana implemented an inclusive education policy framework in 2015, which proposes the transformation of special schools into resource centres to serve as an assistive mechanism in mainstream education. However, it still maintains special schools for children with 'severe and profound disabilities'. It notes that these special schools will be expected to cooperate with mainstream schools to accommodate the education needs of children and continued screening of staff to ensure they are adequately trained to cater to children with disabilities.⁹⁹ Based on the initial report submitted to the CRPD Committee, the inclusive education policy framework is being implemented in 20 districts, and some children with disabilities are afforded an education in mainstream schools and can receive adequate support.¹⁰⁰ However, the implementation of the inclusive education policy does not accommodate the education needs of all children with disabilities.¹⁰¹ Thus, children with learning disabilities face discriminatory practices related to inclusive education due to limited facilities. Children with learning disabilities are ultimately not receiving equal education as compared to children without disabilities.¹⁰² The endeavours to advance inclusive education have not yielded the intended outcome, and the Committee recommended Ghana examine its inclusive education framework to address the hindrances children with disabilities face in enjoying the right to inclusive education.¹⁰³

⁹⁷ The Republic of Namibia Ministry of Education Arts and Culture, 'Assessing inclusive education in practice in Namibia: Challenges and opportunities in leaving no child behind' (2018) 39.

⁹⁸ *ibid* 40.

⁹⁹ UNESCO, 'Global education monitoring report 2020' (n 80) 59.

¹⁰⁰ CRPD Committee, 'Initial report submitted by Ghana under article 35 of the Convention' (8 March 2019) UN Doc CRPD/C/GHA/1 para 83.

¹⁰¹ *ibid* paras 88, 89.

¹⁰² ACERWC, 'Concluding observations and recommendations on the Republic of Ghana initial report on the status of implementation of the African Charter on the Rights and Welfare of the Child' (2016) para 9.

¹⁰³ *ibid* para 29.

2.4.2 *The role of non-state actors*

In Algeria, there have been efforts towards the advancement of inclusive education by local and international NGOs, for example, Humanity and Inclusion.¹⁰⁴ In enforcing the right to education, Humanity and Inclusion works specifically with children with disabilities in Algeria to enhance the accommodation received at special and mainstream educational institutions.¹⁰⁵ Generally, the organisation fosters sensitisation sessions for parents, media, stakeholders in education and teachers on methods of inclusive education.¹⁰⁶ Most recently, in 2015, the organisation commenced a two-year project titled 'IE-LID: The education of children in disabling situations at the centre of territorial development dynamics in North Africa', focusing on Algeria, Morocco and Tunisia.¹⁰⁷ The aim of this project was two-fold: to support CSOs in developing local solutions and mechanisms 'to promote information, referrals, and support for children with disabilities in education, social and rehabilitation services'.¹⁰⁸ Second, the objective was to develop action plans with an inclusive foundation to 'improve the conditions in which children with disabilities are educated in'.¹⁰⁹ In Algeria, an estimated 277 children benefitted from this project as they had the opportunity to undergo specialist consultations to diagnose their disabilities and were referred to appropriate services that could be sought. Further, an average of 192 education professionals trained in employing inclusive education methods for children with disabilities.¹¹⁰

Beyond this data, research is limited in adequately assessing the impact of this project by an NGO in contributing to the success of inclusive education. However, according to a review of Algeria's initial report by the CRPD Committee in 2018, it was noted with concern that over 7,000 children with disabilities attended 'special needs' institutions

¹⁰⁴ A Zineb, 'Algeria' in E Fokala, M Murungi and M Aman (eds), *The status of implementation of the African Children's Charter: A Ten-Country Study* (Pretoria University Law Press 2022) 64, 65.

¹⁰⁵ Humanity & Inclusion, 'Algeria' (*Humanity & Inclusion*) <<https://www.hi-us.org/algeria>> accessed 15 August 2022.

¹⁰⁶ *ibid.*

¹⁰⁷ Humanity & Inclusion, 'Country card Algeria – 2018) (Humanity & Inclusion 2018) <https://www.handicapinternational.be/sn_uploads/country/Humanity-Inclusion-Algeria-Projects.pdf> accessed 15 August 2022.

¹⁰⁸ *ibid.*

¹⁰⁹ *ibid.*

¹¹⁰ *ibid.*

that were not inclusive.¹¹¹ Further, the committee highlighted the advancements in including children with disabilities in mainstream schools.¹¹² Despite Algeria's efforts to include children with learning disabilities in education and the role of CSO in promoting the need for inclusive education, there are still limitations in the approach to inclusive education for children, more specifically, the maintenance of segregated schools and the small-scale impact of CSOs as highlighted above.

Similarly, in Tanzania, Connects Autism (CA) is an NGO with the objective of improving the conditions of children with autism and other cognitive disabilities in society to ensure they reach their full potential and are treated with dignity.¹¹³ One of the initiatives of this organisation is an Inclusive Education Programme. Under this programme, a series of workshops and seminars have been conducted to raise awareness about cognitive disabilities, like learning disabilities, promote early assessment and identification of these children, and reduce stigma.¹¹⁴ Through these endeavours, the NGO is able to create a multi-disciplinary team through the various stakeholders in attendance ranging from government officials and social workers to parents and children themselves, to encourage the implementation of inclusive education.¹¹⁵ This programme has yielded positive outcomes; some of these include an increase in the enrolment of children with cognitive disabilities, increased inclusion of children with these disabilities in mainstream schools, active involvement of parents, and, more importantly, improvement of services provided to children with disabilities by the government.¹¹⁶ The role of non-state actors is vital in advancing inclusive education and, as seen in the example of the work of CA, can encourage the government to be more proactive.

¹¹¹ UN Office of the High Commissioner, 'Committee on the Rights of Persons with Disabilities reviews the report of Algeria' (OHCHR, 30 August 2018) <<https://www.ohchr.org/en/press-releases/2018/08/committee-rights-persons-disabilities-reviews-report-algeria>> accessed 16 August 2022.

¹¹² *ibid.*

¹¹³ Connects Autism Tanzania, 'Inclusive education initiative' (*Connects Autism Tanzania*) <<https://connectsautismtanzania.org/inclusive-education-initiative/>> accessed 18 September 2022.

¹¹⁴ *ibid.*

¹¹⁵ *ibid.*

¹¹⁶ *ibid.*

2.5 CONCLUSION

The ACRWC and the CRPD provide the legal foundation for inclusive education in Africa through articles 11(3) and 24. Both Committees have commented extensively through concluding observations and general comments on what constitutes inclusive education and what measures to implement to ensure fulfilment of this right. African state parties have made positive developments toward inclusive education, but there is still a long way to go concerning children with learning disabilities.

Inclusive education is not achieved by merely placing children with learning disabilities in a mainstream classroom. Instead, it is about transforming the entire education system to ensure that all children are accommodated from inception. The essence of education should be to strengthen children's skills and abilities and enable them to reach their full potential. Several African countries have legislation and policies that explicitly provide for the right to education for children with learning disabilities. Some even go as far as making provisions for inclusive education.

However, often when African countries claim to adhere to inclusive education, children with learning disabilities are integrated in mainstream classrooms without the appropriate learning environment to ensure their individual needs are accommodated. Other approaches include special units within schools where children with learning disabilities are often placed in segregated settings like because of the assumption that this will be more beneficial. Unfortunately, this segregated approach only further perpetuates negative stereotypes. More efforts should be made to shift from segregated and integrated learning to inclusive schools to attain full inclusion.

3.

COMPARATIVE LESSONS FROM KENYA AND UGANDA IN
REALISING THE RIGHT TO INCLUSIVE EDUCATION

3.1 INTRODUCTION

This chapter explores the extent to which Kenya and Uganda have implemented article 11(3) of the ACRWC and article 24 of the CRPD concerning inclusive education for children with learning disabilities. It will analyse the approaches to education in three sections for both countries. First, the chapter scrutinises national legislation and policy frameworks and assess the adequacy of these frameworks. Further, it discusses emerging jurisprudence of domestic courts regarding children with learning disabilities and inclusive education. Finally, it examines quantitative field research in Uganda and Kenya to understand if the state parties are fulfilling their obligations, outlined in the ACRWC and the CRPD to ensure, appropriately, the right to inclusive education, in Kenya and Uganda, respectively. Collectively, these sections will provide an understanding of the obligation of state parties to protect, promote and fulfil children's rights under the ACRWC and the CRPD.

3.2 KENYA

Kenya is considered one of the most progressive states in Africa, in the context of promoting and systematising the implementation of inclusive education for children with learning disabilities.¹¹⁷ The advancement of education for children with disabilities in Kenya can be traced as far

¹¹⁷ BR Ireri and others, 'Policy strategies for effective implementation of inclusive education in Kenya' (2020) 12(1) International Journal of Educational Administration and Policy Studies 28, 29.

back as the end of World War II,¹¹⁸ before the ratification of international instruments like the ACRWC and the CRPD. The Salvation Army Church (SAC), led by missionaries, initially established a rehabilitation centre for blind men, which was later transformed into and recognised as the first educational institution for blind children in Kenya, and East Africa.¹¹⁹ Later in 1960, SAC also initiated a centre for children with physical disabilities, which later became a school for children with physical disabilities in Kenya.¹²⁰ As a result of these initiatives by missionaries, the government of Kenya began to actively provide education for children with learning disabilities. Still, the focus was mainly on visual, hearing and physical disabilities.¹²¹ Most of these efforts were generally concentrated on traditional understandings of disabilities,¹²² neglecting other disabilities like learning disabilities. Therefore, this is only considered an effort towards inclusivity for PWDs but not meeting the threshold for inclusive education for children with learning disabilities which was later established by article 11(3) of the ACRWC and article 24 of the CRPD.

In 2003, the Persons with Disability Act was passed and provided for non-discrimination in admission to education institutions and accommodation of individual needs of PWDs under article 18. There is also a provision for an integrated system of formal education under article 19.¹²³ However, these provisions were not sufficient, especially considering the use of ‘integration’ which the CRPD Committee in General Comment 4 clarifies that does not constitute inclusive education. Furthermore, the Act contained derogatory language against PWDs and the CRPD Committee urged the government of Kenya to amend the Act to ensure complicity with the requirements stipulated under the CRPD.¹²⁴ There were also concerns about the lack of a policy which protect children

¹¹⁸ EW Kiru, ‘Special education in Kenya’ (2019) 54(3) *Intervention in School and Clinic* 181, 183.

¹¹⁹ The Republic of Kenya Ministry of Education, ‘Sector Policy for Learners and Trainees with Disabilities’ (Ministry of Education 2018) 7 <https://planipolis.iiep.unesco.org/sites/default/files/ressources/kenya_sector_policy_learners_trainees_disabilities.pdf> accessed 19 August 2022.

¹²⁰ *ibid.*

¹²¹ *ibid.* 7.

¹²² *ibid.* 8.

¹²³ Persons with Disabilities Act No 14 of 2003 (Kenya) <www.un.org/development/desa/disabilities/wp-content/uploads/sites/15/2019/11/Kenya_Persons-with-Disability-Act.pdf> accessed 10 October 2022.

¹²⁴ CRPD Committee, ‘Concluding observations on the initial report of Kenya’ (30 September 2013) UN Doc CRPD/C/KEN/CO/1 para 6.

from being rejected on the basis of disability and receiving reasonable accommodation.¹²⁵ However, the Act was revised in 2012 to align with the 2010 Constitution and obligations under the CRPD and the ACRWC.¹²⁶

There was no specific inclusive education policy until 2009 when the MoE developed a SNE Framework to safeguard and promote the right of children with disabilities to attain equal access to special education services, advancing the national goal of education for all.¹²⁷ The aspiration of the SNE Framework was ‘assessment and intervention, advocacy and awareness creation, capacity building and development, research and documentation, and use of specialised facilities and technology’.¹²⁸ This policy was the leading legal framework guiding the institution of special needs education in Kenya for children with learning disabilities. Unfortunately, this did not translate to the reality for children with learning disabilities. They did not benefit from it due to many factors, such as the lack of implementation guidelines.¹²⁹ Since 2009, there has been a primary shift in the inclusive education landscape in Kenya as exhibited in the growing national legislation.

3.2.1 National legislation and policy framework

The 2010 Constitution was endorsed by way of referendum on 4 August, following a failed referendum in 2005 and electoral violence in 2007;¹³⁰ the enactment of the 2010 Constitution provided and expansion of the rights of PWDs in Kenya, and the recognition of disability rights¹³¹ The 2010 Constitution includes explicit recognition of the right to education for all PWDs under article 54:

¹²⁵ CRPD Committee (n 124) para 44.

¹²⁶ K Koech, ‘Has the ten years of the 2010 constitution improved the lives of persons with disability?’ (The Youth Café, 17 September 2020) <www.theyouthcafe.com/perspectives/has-the-ten-years-of-the-2010-constitution-improved-the-lives-of-persons-with-disability> accessed 10 October 2022.

¹²⁷ Kiru (n 118) 183.

¹²⁸ *ibid.*

¹²⁹ The Republic of Kenya Ministry of Education (n 119) 2.

¹³⁰ C Glinz, ‘Kenya’s new constitution: A transforming document or less than meets the eye?’ (2011) 44(1) Law and Politics in Africa, Asia and Latin America 60, 62.

¹³¹ Koech (n 126).

A person with any disability is entitled ... (b) to access educational institutions and facilities for persons with disabilities that are integrated into society to the extent compatible with the interests of the person ... (e) to access materials and devices to overcome constraints arising from the person's disability.

Article 54(b) and (e), in particular, require that the education system be adequate in realising this right and that the interest of PWDs are considered. Ultimately, one can infer that the government is committed to an inclusive education system that will ensure all PWDs reach their full potential and can transit from one level of education to another with the necessary materials and support. This provision also protects children with learning disabilities as they fit this criterion. In guaranteeing that children with learning disabilities are catered for, the government of Kenya adopted the 2018 SPLTD to further elaborate on how to implement an inclusive education sector.

The proposed 2015 Persons with Disabilities Bill was progressive in that it provided a definition of inclusive education:¹³²

Educating students with disabilities in ... general and inclusive education classes in the schools or least restrictive environments and in regular classrooms and ensure that they received specialised instruction delineated by their individualised education programs within the context of the core curriculum and general class activities regardless of types or severity of disabilities, to the maximum extent possible.

Furthermore, article 31 provides that all youth with disabilities are entitled to full, inclusive and accessible education. Later in 2019, the Persons with Disabilities Amendment Bill was tabled and proposed the amendment of section 18 of the PWD Act of 2003. Under this section, the amendment bill introduced a sub-section which states '[t]he national and county governments shall promote inclusive education in all schools and institutions for all learners with disabilities'.¹³³ Neither of these bills have been enacted by the legislature and so the impact remains theoretical. However, based on the provisions outlined, this Act

¹³² Persons with Disabilities Bill 2015 (Kenya) <www.dlci-hoa.org/assets/upload/kenya-policy-tracker/20200804123121775.pdf> accessed 10 October 2022.

¹³³ The Persons with Disabilities (Amendment) Bill 2019 (Kenya) <www.parliament.go.ke/sites/default/files/2019-02/The%20Persons%20with%20Disabilities%20%28Amendment%29%20Bill%2C%202019.pdf> accessed 10 October 2022.

has the potential to complement existing legislation to safeguard the right to inclusive education for children with learning disabilities.

In 2016, the government published a National Plan of Action regarding the implementation of recommendations from the CRPD Committee which outlined specific activities to realise inclusive education with timelines provided.¹³⁴ For example, the first activity states that policies and legislation will be amended to appropriately provide for inclusive education and the timeline to complete this was 2017.¹³⁵ Concerning this activity, the government did repeal the 2009 SNE Framework and instituted the 2018 SPLTD.

The 2018 SPLTD acknowledges the need to shift towards inclusive education by emphasising that children with disabilities have the right to be placed in mainstream classrooms. The policy is not limited to children only, as it is crosscutting through all stages of education, from early childhood development to tertiary education.¹³⁶ It is essential to highlight that the policy covers learners and trainers with disabilities and stipulates different categories, including '[i]ntellectual and developmental disabilities, specific learning disabilities ... [and] Autism'.¹³⁷ It is commendable that the policy stipulates learning disabilities as its own category and autism as an individual category. As indicated in chapter two, across the continent, many policies focused on inclusive education do not stipulate learning disabilities, so this is a laudable effort by the Kenyan government. Recognising learning disabilities ensures that these children are also protected. The policy identifies several objectives and strategies in realising inclusive education for children with learning disabilities, including but not limited to: capacity building and human resource development, public participation and engagement, and curriculum.¹³⁸

Regarding capacity building, the SPLTD highlights the efforts of the National Education Sector Plan of 2014, which underlines the necessity of capacity building 'of teachers, trainers, caregivers, parents, educational

¹³⁴ The Republic of Kenya Ministry of Gender Children and Social Development, 'Kenya National Social Protection Policy' (2011) <www.socialprotection.or.ke/images/downloads/kenya-national-social-protection-policy.pdf> accessed 10 October 2022.

¹³⁵ *ibid.*

¹³⁶ UNESCO, 'Kenya – Inclusion' (UNESCO) <<https://education-profiles.org/sub-saharan-africa/kenya/-inclusion#Laws,%20Plans,%20Policies%20and%20Programmes>> accessed 16 August 2022.

¹³⁷ The Republic of Kenya Ministry of Education (n 119) 2.

¹³⁸ *ibid.*

managers, learning support assistants and technical disability-related personnel ... physiotherapists, occupational therapists, counsellors, orientation and mobility trainers and ICT experts' in all phases of education for children with learning disabilities.¹³⁹ It builds on this policy by providing strategies specific to children with learning disabilities and mandates MoE to establish a uniform minimum standard of providing pre-service and in-service capacity-building training for staff who teach children with learning disabilities.¹⁴⁰ This will ensure that teachers are continuously trained, and methods are consistently improved to ensure that children with learning disabilities are adequately accommodated in the classroom.¹⁴¹ In addition, this will also enable teachers to be able to identify children who may require additional support as sometimes learning disabilities are not immediately diagnosed. Another strategy stipulated is to encourage the 'recruitment and re-deployment of human resources in schools' to make sure that teachers' skills are appropriately aligned to the needs of children with learning disabilities.¹⁴²

Under the objective of public participation and engagement of children with disabilities in the realisation of inclusive education, SPLTD reiterates the obligations of Kenya under the CRPD and the ACRWC. Both instruments call on state parties to recognise that all children with disabilities are entitled to a life of dignity, an environment that advocates for self-reliance and one that enables active participation of the child.¹⁴³ It further notes the constraints children with learning disabilities face concerning participation in education, namely, social, physical and language barriers such as attitudes perceiving children with learning disabilities as less competent.¹⁴⁴ After identifying issues that pertain to the Kenyan context of inclusive education for children with learning disabilities, the policy outlines strategies for the MoE to pursue.¹⁴⁵

¹³⁹ The Republic of Kenya Ministry of Education (n 119) 21.

¹⁴⁰ *ibid.*

¹⁴¹ *ibid.*

¹⁴² *ibid.* 22.

¹⁴³ *ibid.* 23.

¹⁴⁴ *ibid.*

¹⁴⁵ *ibid.*

1. Facilitate representation and participation of learners and trainees with disabilities and their families in all institutions including in student councils, clubs and associations.
2. Provide appropriate communication channels in all institutions of learning.
3. Organize inclusive, relevant and needs-based co-curricular and recreational activities for learners and trainees with and without disabilities.

Children with learning disabilities must participate in inclusive education because they can provide further insight into their individual needs and, in turn, ensure that these are catered to in the classroom.

The last objective that will be highlighted is the suitability of the curriculum to promote inclusive education. A curriculum is the critical foundation to delivering quality and well-rounded education to children with learning disabilities.¹⁴⁶ The Kenya Institute of Curriculum Development (KICD) has attempted to modify the regular curriculum to accommodate the needs of a few categories of children with disabilities to tackle the diverse needs of these children. The KICD has developed special curriculum to provide support to children with 'severe' disabilities.¹⁴⁷ However, SPLTD highlights that these efforts are not sufficient and a flexible curriculum that addresses the needs of all children should be developed to ensure the practice of inclusive education.¹⁴⁸ Therefore, the policy requires the MoE to frequently research, to understand the needs of children with learning disabilities in developing a curriculum, to provide a curriculum that will accommodate the myriad of needs of children with learning disabilities and to promote sensitisation parents for the various stakeholders in education such as parents, teachers and counsellors.¹⁴⁹

Although only three objectives of SPLTD have been highlighted, it indicates the multidimensional approach to implementing inclusive education in Kenya. This is important, especially compared to the countries highlighted in chapter two that adopt a narrower approach. SPLTD, read with article 54 of the 2010 Constitution, fulfils the

¹⁴⁶ The Republic of Kenya Ministry of Education (n 119).

¹⁴⁷ *ibid* 27.

¹⁴⁸ *ibid*.

¹⁴⁹ *ibid* 28.

protection element of realising the right to inclusive education. Kenya has provided a justiciable avenue for inclusive education for children with learning disabilities.

3.2.2 *The jurisprudence of the domestic courts*

In 2014, the High Court of Kenya adjudicated on the right to education in *John Kiplangat Barbaret & 3 others v Attorney General & 4 others (Barbaret case)*.¹⁵⁰ The brief facts of the case are that a primary school established and registered in 1973 was de-registered after being burnt down.¹⁵¹ After this incident, the government ceased to provide support to the school but still recognised the school as a public school for other activities like inter-zonal examinations, just not as a national examination centre.¹⁵² As a result, community members took action into their own hands to employ teachers so that the school can be functional.¹⁵³ Thus, the petitioners contended that the right to education was being violated, among other rights.¹⁵⁴

The judgment recognised the importance of education in society and in the development of an individual to effectively contribute to development in the nation through active participation.¹⁵⁵ Similar to SPLTD, it recognised Kenya's international obligations to realise education through ratification of instruments and specifically mentions article 11 of the ACRWC.¹⁵⁶ It then highlighted domestic obligations under the 2010 Constitution and references article 43, which provides for the right to education, and article 53, which guarantees that this right must be realised, immediately.¹⁵⁷ Judge Anyara Emukule concluded that:¹⁵⁸

[A]rticle 21 (1) of the Constitution, places a fundamental duty on the state and every state organ to *observe, respect, protect, promote and fulfil the rights and fundamental freedoms in the Bill of Rights*. By failing to support the efforts of this marginalised community to realise their right to education, the State acted and is acting retrogressively.

¹⁵⁰ John Kiplangat Barbaret & 3 others v Attorney General & 4 others (*Barbaret case*) [2014] eKLR <<http://kenyalaw.org/caselaw/cases/view/104449>> accessed 22 August 2022.

¹⁵¹ *ibid* para 6.

¹⁵² *ibid* para 7.

¹⁵³ *ibid* para 8.

¹⁵⁴ *ibid* para 9.

¹⁵⁵ *ibid* para 25.

¹⁵⁶ *ibid* para 27.

¹⁵⁷ *ibid* para 28.

¹⁵⁸ *ibid* para 40.

Although, this case is about the right to education of indigenous peoples, its relevance in promoting the right to education, broadly, cannot be overstated. The scope of the judgment includes inclusive education for children with learning disabilities. This deductive reasoning is also made possible, with references in the judgment which speak to the importance of a non-discriminatory approach to education of minorities.¹⁵⁹ Therefore, one can infer that inclusive education must equally be realised, immediately. Further, the judgment is a reminder to the Kenyan government to ensure that the rights of children with learning disabilities are also recognised and upheld. This judgment ultimately promotes the right to inclusive education as well, considering it is an element of education necessary for children with learning disabilities to reach their full potential.

3.2.3 Field research in the implementation of inclusive education

Ohba and Malenya conducted a study in 2022 to assess inclusive education in Kenyan public schools for learners with disabilities and focused on two regions, in particular, Nairobi and Marsabit. In total, 14 schools were selected, five were in Nairobi and nine were identified in Marsabit.¹⁶⁰ This study made sure to assess public schools with special units; in Nairobi, four of five schools had intellectual disability units, and in Marsabit, different disabilities were accommodated in four special schools. The study focused on teachers' attitudes and willingness to implement inclusive education and collected data from 126 teachers.¹⁶¹

The research findings indicate the present reality of inclusive education and help readers understand if Kenya is fulfilling its obligation. One of the leading questions in both regions was how inclusive education was being addressed; a teacher in Nairobi regrettably mentioned how one of the main challenges is the dissemination of the policy framework and its enforcement, and the situation is even worse in schools without special units.¹⁶² A teacher in Marsabit responded similarly, indicating

¹⁵⁹ It is worth noting that the petition was filed on behalf of the Sagamian community, a minority group in Kenya, and Judge Emukule recognises the group as a minority in para 47.

¹⁶⁰ A Ohba and FL Malenya, 'Addressing inclusive education for learners with disabilities in the integrated education system: the dilemma of public primary schools in Kenya' (2022) 52(1) *Compare: A Journal of Comparative and International Education* 19.

¹⁶¹ *ibid* 25.

¹⁶² *ibid* 28.

that knowledge of the policy is apparent; however, facilitation is lacking because of limited resources in schools to sufficiently accommodate the needs of children with learning disabilities.¹⁶³

The interviews with these teachers suggest that implementing inclusive education continues to be challenging. The teachers identified barriers to realising inclusive education, including limited funding, outdated facilities, inadequate teaching and learning materials, and, most importantly, overcrowded classrooms.¹⁶⁴ Classrooms are often overcrowded due to limited education facilities in certain areas, resulting in a teacher-student ratio of 1:70 or 1:80, which makes it challenging to cater to the diverse needs of children with learning disabilities.¹⁶⁵

The study also explored the percentage of teachers trained in teaching children with learning disabilities. The findings show that 28% of all respondents were specialised and 47% of teachers had a degree of experience teaching children with learning disabilities. The results indicate that capacity building of teachers is possible and needs to be strengthened so that children with learning disabilities can be a part of mainstream classrooms with a foundation of inclusive education.¹⁶⁶ Most teachers recognised the significance of students learning together; 63% of non-specialist teachers indicated that it is challenging to teach all students together because of overcrowded classrooms, and some schools were not set up to allow inclusive education.¹⁶⁷

This study does not represent Kenya entirely, though it indicates its efforts toward instituting inclusive education. It is encouraging to note that almost half of the teachers interviewed are experienced in dealing with children with learning disabilities and want to implement inclusive education in their institutions of learning. The circumstances make it more challenging, but it is promising to see the direction Kenya is moving in to realise inclusive education for children with learning disabilities.

¹⁶³ Ohba and Malenya (n 160) 28.

¹⁶⁴ *ibid.*

¹⁶⁵ *ibid.*

¹⁶⁶ *ibid* 32.

¹⁶⁷ *ibid.*

3.3 UGANDA

Since the 1950s, Uganda has engaged in several discussions regarding special needs education,¹⁶⁸ however legislation which provided for inclusive education was not passed until the 1980s when a Special Needs Education department was established under the Ministry of Education and Sports (MoES) with the mandate to monitor inclusive education policies.¹⁶⁹ The Government later introduced the Universal Primary Education Policy in 1997.¹⁷⁰ The policy does not use the term inclusive education, however, it has been interpreted to provide equal access and participation for all learners in education. There have also been efforts to train teachers to be able to adequately accommodate children with learning disabilities in an inclusive environment.¹⁷¹

There is robust advocacy for disability-related issues such as the advancement of education, to ensure that policy dialogue is lively in Uganda, and several efforts have been made toward the operationalisation of inclusive education.¹⁷²

3.3.1 National legislation and policy framework

The 1995 Constitution provides for the right to inclusive education through several provisions, but without explicitly using the term. Articles 21, 30, 34 and 35 can be read together to deduce this. Article 21 provides for the right to equality and non-discrimination and further indicates that Parliament can enact legislation or policies deemed necessary to redress socio-economic imbalances of society. Article 30 reiterates the right to education of all persons. Article 34 outlines the rights of children and specifies that all children are entitled to education and it is the responsibility of the state and guardians of the child to

¹⁶⁸ Uganda Society for Disabled Children and Enable-Ed, 'Inclusive education in Uganda – examples of best practice' (Enable-Ed and Uganda Society for Disabled Children 2017) 2<<https://afri-can.org/wp-content/uploads/2017/11/Inclusive-Education-in-Uganda-examples-of-best-practice-March-2017.pdf>> accessed 27 August 2022.

¹⁶⁹ The Republic of Uganda Ministry of Education and Sports, 'Special needs & inclusive education' (*Ministry of Education and Sports*, 9 May 2023) <www.education.go.ug/special-needs-inclusive-education/> accessed 10 October 2022.

¹⁷⁰ B Guzu, 'The state of access to education by women & girls with disabilities the case of Uganda – A paper submitted to the 58th session of the UN Committee of CEDAW' (2014) 2.

¹⁷¹ *ibid.*

¹⁷² Uganda Society for Disabled Children and Enable-Ed (n 168) 7.

ensure the child receives basic education. Article 35 provides the rights of PWDs and the obligation of the state to take ‘appropriate measures to ensure that they realise their full mental and physical potential’. Therefore, these provisions collectively mandate the government to accommodate the needs of children with learning disabilities.

In addition to the Constitution, and particularly the provision of the Constitution flagged above, the 2006 PDA provides a legal framework for inclusive education under article 6 ‘non-discrimination in the provision of education services’.¹⁷³ Article 6, stipulates what constitutes discrimination, denial or limited access to a service. It further calls for education institutions to ensure that inclusive education is provided for all children with learning disabilities enrolled. Lastly, inclusive education is defined as ‘a system where a learner with a disability is taught together with other learners, in the same environment and where, if required under subsection (5), extra support is given to the learning with disability’. Currently, this is the only definition of inclusive education in legislation and is important for the purposes of understanding and implementing the right to inclusive education in Uganda. The policy does not clearly define the scope of disabilities targeted but it can be assumed that children with learning disabilities are also protected. It is key that inclusive education is properly defined which will allow for appropriate application of inclusive education policies in Uganda.

One of the more recent developments towards inclusive education is the development of a new curriculum in early 2022. The MoES through the NCDC developed an abridged curriculum for primary and secondary schools in Uganda.¹⁷⁴ The introduction of the Primary 2 policy requires that an applicable method of learning is the focus on learner-centred approaches as this will be beneficial in early childhood development. As per the curriculum, a learner-centred approach is the use of different ‘practical learning activities’ and ‘as many learning aids as possible to make learning enjoyable, real and engaging’.¹⁷⁵ It includes and outlines a number of methods including collaborative learning and individualised instruction which are undoubtedly key elements in

¹⁷³ Persons with Disabilities Act 2006 (Uganda).

¹⁷⁴ R Mukalele, ‘Abridged Curriculum: NCDC Publishes Final Edited Booklets’ (*ICT Teachers’ Association of Uganda*, 10 January 2022) <www.icteachersug.net/abridged-curriculum-ncdc-publishes-final-edited-booklets-download-here/> accessed 27 August 2022.

¹⁷⁵ The Republic of Uganda Ministry of Education and Sports, ‘Primary school abridged curriculum for Uganda Primary 2’ (2022) 3.

the operationalisation of inclusive education. Collaborative learning is recognised as one of the most effective methods of fast-tracking learning in the abridged curriculum.¹⁷⁶ According to General Comment 4, collaborative learning can help children learn effectively and improve communication.¹⁷⁷ This is critical because it will contribute to and strengthen children's cognitive development and peer-to-peer support with one another more than a teacher and ultimately take control of their progress.¹⁷⁸ This promotes a positive learning environment that encourages children to realise their skills and ideally work towards the development of their full potential.¹⁷⁹ The other element highlighted is individualised instruction which is crucial as it ensures that the teacher is able to provide the required support to all children, including children with disabilities. This ensures that children with learning disabilities are continuously motivated and enables them to acquire the necessary skills at certain levels of education.¹⁸⁰ Although the abridged curriculum provides for some elements of inclusive education, the biggest limitation is the absence of recognising inclusive education as the foundation to a prosperous environment for children.

There are scattered provisions of inclusive education which enforce this right for children with learning disabilities, however, Uganda is yet to develop a specific inclusive education policy. An attempt was made in 2012 when a policy on inclusive education and special needs education was tabled before cabinet. However, in January 2017, members of cabinet decided to merge the inclusive education policy with the general education policy. There is a broad framework covering inclusive education, but not specific to children with learning disabilities, or any disability in general.¹⁸¹

¹⁷⁶ The Republic of Uganda Ministry of Education and Sports (n 175) 3.

¹⁷⁷ CPRD Committee, 'General Comment 4 on article 24: Right to inclusive education' (25 November 2016) UN Doc CRPD/C/GC/4 para 70.

¹⁷⁸ J Ford, 'Educating students with learning disabilities in inclusive classrooms' (2013) 3(1) *Electronic Journal for Inclusive Education* 2, 9.

¹⁷⁹ *ibid.*

¹⁸⁰ The Republic of Uganda Ministry of Education and Sports (n 175) 4.

¹⁸¹ Uganda Society for Disabled Children and Enable-Ed (n 168) 52.

3.3.2 *The jurisprudence of domestic courts*

The High Court in Uganda, in *The Centre for Health, Human Rights and Development & 3 others v Attorney General & 1 other* (CEHURD), held that the government violated the rights of children with autism to inclusive education.¹⁸² The case concerns the right to equality and non-discrimination, but the significance of this judgment is a victory for children with learning disabilities considering a large percentage of children with autism are likely to have a learning disability.¹⁸³ The ruling also called for the government to cultivate guidelines to ensure early assessment for children with autism to ensure they reach their full potential.¹⁸⁴

The brief facts of the case based on the petitioners is that in November 2016, the condition of Perez Mwase, the child with autism, was discovered, resulting in a referral to a psychiatrist who, after examination, diagnosed the child with Autism Spectrum Disorder. Mwase was unable to access appropriate health services that prevented early assessment of his condition and this has had a detrimental effect on his life as he cannot do anything individually and requires immense assistance.¹⁸⁵ The judgment also acknowledges the discriminatory treatment of children with disabilities that invalidates the realisation of their rights.¹⁸⁶ Justice Nabisinde concluded that the state has a responsibility to ensure early assessment for individuals with neurological disorders, and the failure to do so constitutes a violation of their dignity and the realisation of their full potential.¹⁸⁷ Children with disabilities in Uganda are often neglected and denied their right to assistive support and services.¹⁸⁸ According to

¹⁸² *The Centre for Health, Human Rights and Development & 3 others v Attorney General & 1 other* (2017) HCSS 135 of 2017 (CEHURD case) 2; CEHURD, 'Victory for children with autism as court rules in favour of Perez Mwase' (CEHURD, 17 May 2022) <www.cehurd.org/victory-for-perez-mwase-cehurd-and-ors-vs-buyende-district-local-government-and-anor-hccs-135-2017/> accessed 25 August 2022.

¹⁸³ E Bailey, 'How to differentiate Autism from a learning disability' (ADDitude, 12 January 2020) <www.additudemag.com/autism-learning-disability-symptoms/> accessed 20 August 2022.

¹⁸⁴ Validity, 'Uganda: High Court orders government to ensure community services for children with autism' (Validity, 25 March 2022) <<https://validity.ngo/2022/03/25/uganda-high-court-orders-government-to-ensure-community-services-for-children-with-autism/>> accessed 19 August 2022.

¹⁸⁵ CEHURD case (n 182) 2.

¹⁸⁶ *ibid* 15.

¹⁸⁷ *ibid* 17.

¹⁸⁸ Validity (n 184).

the Executive Director of Mental Health Uganda, Derrick Kizza, the judgment on the High Court in *CEHURD* is indicative of ‘signs that the judiciary is starting to understand ... the unique needs of people with intellectual disabilities and their struggles in access to justice’.¹⁸⁹

Therefore, the *CEHURD* case contributes to the promotion of inclusive education for children with learning disabilities, as support is crucial to creating a conducive environment. It can be applied in pushing the rhetoric of inclusive education in Uganda and is a significant judgment.

3.3.3 Field research in the implementation of inclusive education

In 2013, Ojok and Wormnæs conducted a study to examine the stance and willingness of primary school teachers regarding the inclusion of and teaching children with intellectual disabilities in the mainstream classroom.¹⁹⁰ The respondents included 125 teachers in a specific district of Uganda, Karamoja, and the primary tool utilised was the Opinions Relative to Mainstreaming Scale (ORMS), which has been used in other countries, but it was tweaked slightly to be relevant to the Ugandan situation.¹⁹¹ Broadly, the ORMS is an attitude scale developed by Larrive and Cook in 1979 which comprises of 30 close ended questions about teacher opinions; there are 12 negative statements and 18 positive statements.¹⁹² The application of the method was tweaked to fit the Ugandan context; the changes made were minor, for example the term ‘students’ was replaced with ‘pupils’ because that is the terminology used to refer to primary school students.¹⁹³

The results suggest that teachers in this district were more inclined to support the inclusion of children with learning disabilities in mainstream classrooms, which in turn translated to their willingness to teach these students.¹⁹⁴ Thus, many teachers are willing to incorporate inclusive education practices in their schools.¹⁹⁵ It must be noted, however, that

¹⁸⁹ Validity (n 184).

¹⁹⁰ P Ojok and S Wormnæs, ‘Inclusion of pupils with intellectual disabilities: primary school teachers’ attitudes and willingness in a rural area in Uganda’ (2013) 17(9) *International Journal of Inclusive Education* 1003, 1004.

¹⁹¹ *ibid* 1007.

¹⁹² *ibid*.

¹⁹³ *ibid* 1008.

¹⁹⁴ *ibid* 1015.

¹⁹⁵ *ibid*.

this district does not have a history of specialised schools for children with learning disabilities, and the only option for children was to enrol in regular schools. Therefore, the absence of special schools in this district arguable translated into widespread support of inclusive education and accommodating individual needs of children.¹⁹⁶

Despite general acceptance, the teachers who interacted with younger students did not express the same positivity because of the overcrowded classrooms and the significance of work required.¹⁹⁷ It was reported that lower-primary teachers usually taught all the required subjects in one class, making it difficult to accommodate individual needs in a crowded classroom.¹⁹⁸ Further, 77.2% of teachers in Karamoja did not have any training in special education, which illustrates the need for the government to embark on increased sensitisation and workshops.¹⁹⁹ 19% of respondents indicated that the training they obtained comprised mainly of short courses and seminars. Thus, government and other stakeholders should organise such activities to allow teachers to become trained and appropriately cater to children with intellectual and learning disabilities.²⁰⁰

3.4 CONCLUSION

In conclusion, Kenya has made significant strides in realising inclusive education. The 2010 Constitution and 2018 SPLTD arguably provide a comprehensive framework for implementing inclusive education for children with disabilities. SPLTD offers a multisectoral approach for realising inclusive education, as well as implementation guidelines and clearly outlines strategies for the MoE. Further, the High Court has made several rulings on the right to education. The *Barbareet* case was highlighted as it posits the position of the state in the immediate realisation of education and can be applied to pushing the agenda of inclusive education. Lastly, field research conducted by Ohba and Malenya provides a clearer picture of the situation in Kenya. It highlights current achievements in advancing inclusive education for children with learning disabilities and teachers' attitudes.

¹⁹⁶ Ojok and S Wormnaes (n 190) 1015.

¹⁹⁷ *ibid.*

¹⁹⁸ *ibid* 1016.

¹⁹⁹ *ibid.*

²⁰⁰ *ibid* 1015.

Uganda does not have a specific inclusive education policy framework; however, several provisions in the Constitution, the PDA and the 2022 Abridged Curriculum suggest the necessity of inclusive education. In addition, the *CEHURD* case was a landmark judgment for children with neurological disorders, which arguably includes children with learning disabilities. It situates the court's opinion in advancing the rights of children with disabilities and can be applied to the plight of children with learning disabilities in the push for inclusive education. Ojok and Wormnæs conducted a study in 2013 which, though slightly outdated, shows the acceptance of inclusive education in a specific region of Uganda. The attitudes of teachers and students are incredibly positive and support the idea that achieving inclusive education across the country is possible.

Kenya and Uganda have adopted different approaches to realising inclusive education but have nonetheless made laudable efforts and can serve as an inspiration for other African countries. The situation in these countries is not perfect, and the subsequent chapter will discuss barriers and missed opportunities in realising inclusive education.

4.

MISSSED OPPORTUNITIES AND BARRIERS TO REALISING
THE RIGHT TO INCLUSIVE EDUCATION FOR CHILDREN
WITH LEARNING DISABILITIES

4.1 INTRODUCTION

This chapter will explore the missed opportunities in Kenya and Uganda to realise inclusive education in light of the existing legislation and policy frameworks discussed in chapter three. Then it will examine barriers to the effective implementation of inclusive education in Africa generally, and best practices to mitigate these obstacles. The barriers analysed in this chapter are institutional, informational, environmental and attitudinal in nature. First, institutional barriers highlighted are mainly at the level of a ministry of education (or the equivalent), focusing on adequate funding and policy formation. Second, the informational barriers discussed have been split into two themes, the need for increased sensitisation of teachers and the importance of early assessment and identification of children with learning disabilities. Third, environmental barriers such as poor health care and lack of modifications in classrooms are emphasised. Finally, socio-cultural barriers such as negative cultural and traditional perceptions of disability in various African countries are investigated.

4. 2 MISSED OPPORTUNITIES IN KENYA AND UGANDA AND THE IMPLICATIONS OF IT

4.2.1 *Kenya*

At first glance, Kenya's SPLTD appears to tick all the boxes of what constitutes inclusive education. However, one of the repetitive findings in various studies, such as Ohba and Malenya in 2022 and Elder in 2015, was that one of the environmental barriers to inclusive education

is overcrowded classrooms,²⁰¹ making it difficult for individualised instruction and modifications of assessments. Therefore, a worthwhile addition to the SPLTD framework would be a clear indication of a suggested classroom size for the effective implementation of the framework. The indication of a classroom size will most likely translate into building more infrastructure and strengthening human capacity, considering the growing population. This contextualises inclusive education needs to Kenya specifically and would further contribute to children with learning disabilities receiving education on an equal basis.

In indicating the scope of the SPLTD, different categories are stipulated, such as learning disabilities²⁰² and reference is made to specific examples like dyslexia, dyscalculia and dysgraphia. However, considering the category is 'specific' learning disabilities, it may create the confusion that only those disabilities are covered instead of a range of other learning disabilities. There should not be a hierarchy of learning disabilities, as the impact it has on children is not homogenous. It is applauded that examples of learning disabilities are included; however, clarification is needed on which other learning disabilities are accommodated for. The mention of these disabilities, accompanied by definitions in the annexe, will increase awareness of the different types of disabilities and possibly promote further learning.

Apart from these missed opportunities, SPLTD provides a good approach to addressing and implementing inclusive education for children with learning disabilities in Kenya. Above all, it makes specific recognitions of learning disabilities, which is commendable as it ensures the inclusion of this in dialogue at institutional level and also within the classroom, promoting awareness of learning disabilities.

²⁰¹ BC Elder, 'Right to inclusive education for students with disabilities in Kenya' (2015) 18(1) *Journal of International Special Needs Education* 18, 19. See also A Ohba and FL Malenya, 'Addressing inclusive education for learners with disabilities in the integrated education system: the dilemma of public primary schools in Kenya' (2022) 52(1) *Compare: A Journal of Comparative and International Education* 19, 28.

²⁰² The Republic of Kenya Ministry of Education, 'Sector Policy for Learners and Trainees with Disabilities' (Ministry of Education 2018) 7 <https://planipolis.iiep.unesco.org/sites/default/files/ressources/kenya_sector_policy_learners_trainees_disabilities.pdf> accessed 19 August 2022.

4.2.2 *Uganda*

Uganda's most significant missed opportunity is the reluctance to pass an explicit inclusion education policy. Although field research by Ojok and Wormnæs in 2013 indicates the general acceptance of inclusive education, a stand-alone legislation must be enacted to strengthen state accountability and fulfilment of obligations under international instruments. It is not the assumption that merely developing legislation or policy will immediately result in the effective implementation of the policy. However, the argument is that an independent instrument will be more comprehensive and provide specialised measures of redress in cases of the violation of the rights of inclusive education for children with learning disabilities.

The 2006 PDA provides the legal framework for inclusive education, which includes protection from non-discrimination and clearly defines inclusive education. However, there is a need for clarity on the scope of disabilities protected, and inspiration is drawn from Kenya. Although providing extensive lists can lead to a narrow interpretation of the law, it is believed that a clear definition of learning disabilities would be very beneficial. Learning disabilities are not often easily identifiable because of a general lack of knowledge on what constitutes a learning disability. Thus, this legislation governing inclusive education should provide further detail to ensure that children with learning disabilities benefit from the existing provisions.

Another opportunity to indicate the position of the Ugandan government regarding inclusive education for children with learning disabilities was in the abridged curriculums of 2022. The only abridged curriculum assessed in this research was for Primary 2. However, considering the curriculums were passed in 2022, and after two years of school closure in Uganda due to Covid-19, there was ample time for the Ugandan government to consider and research the relevance of alternate approaches to learning.

Broadly, the curriculum fails to use the term inclusive education within the document. It instead highlights specific methods that imply inclusivity; however, the lack of mention of inclusive education is problematic. There is mention of certain inclusive practices, such as collaborative learning and individualised instruction, but that needs to be reemphasised throughout the document so that educators can appreciate the importance of creating a positive environment for children with learning disabilities.

Furthermore, the policy provides a national curriculum for ‘literacy, numeracy, English, Christian religious education [and] Islamic religious education’. However, the curriculums are not very accommodating for children of different learning abilities. For example, it outlines a baseline understanding of what outcomes to expect out of the learners.²⁰³ However, it fails to provide alternative approaches or examples to be used for children with learning disabilities. It just states the expectations of the child in the classroom but not how to necessarily attain it, especially in an environment of mixed learners and cultures.

The MoES restates the necessity of inclusive education in secondary schools while highlighting challenges to addressing quality education. It lays out data collected from the national census to spotlight areas of concern.²⁰⁴ However, it makes no mention of students with intellectual, developmental or learning disorders; neither from the perspective of the teacher nor the student. When conducting a national census, there should be an analysis of the situation of children with learning disabilities. This would help improve policymaking and the schooling experience for children with disabilities.

Considering there is mention of inclusive education in various policy frameworks or legislation, the government of Uganda should be encouraged to pursue the enactment of an inclusive-education policy. Such a policy will establish a standard for educators on the best practices for implementing inclusive education for children with disabilities and specifically mention children with learning disabilities.

4.3 BARRIERS TO REALISING INCLUSIVE EDUCATION

The barriers to effectively implementing inclusive education in Africa are multidimensional; this section will explore institutional, informational, environmental and, finally, socio-cultural barriers. These barriers are also found in the context of Kenya and Uganda, as exhibited by exploring the missed opportunities.

²⁰³ The Republic of Uganda Ministry of Education and Sports, ‘Primary school abridged curriculum for Uganda: Primary 2’ (2022) 5.

²⁰⁴ The Republic of Uganda, ‘Education Abstract’ (Ministry of Education and Sports 2017) <www.education.go.ug/wp-content/uploads/2019/08/Abstract-2017.pdf> accessed 29 August 2022.

4.3.1 *Institutional barriers*

Institutional barriers in this section refer to constraints at the government level preventing the realisation of inclusive education. Governments have the responsibility to develop and enforce inclusive education policies and legislation.²⁰⁵ A major institutional barrier in most African countries is found at the level of the ministry of education. The two leading characteristics are a lack of sufficient funding which impedes development of adequate data collection mechanisms and the limitations of existing policies and legislation.

Ministries of education in many African countries continue to maintain a dual approach to inclusive education, spending funds on mainstream and segregated education. The approach to upholding special schools is not sustainable economically and also continues to exclude children with learning disabilities.²⁰⁶ Therefore, this approach further perpetuates the stereotype that education for children with learning disabilities is costly and unattainable, which is far from the reality. The underpinning of this approach is also rooted in the minimal knowledge of inclusive education and the scope of it. The aim of funding and budgets under the ministry of education should serve the purpose of accommodating the needs of all children with learning disabilities and providing adequate support. It must be noted that funding alone is not the answer to the problem and will not, directly, translate into effective implementation of inclusive education, however allocation of funding is nonetheless an important element in eventually attaining inclusive education.

In addition, existing inclusive education policies are arguably insufficient; there is scarce and inadequate data about children with disabilities and access to and receiving education.²⁰⁷ Many government census' are not updated, and even if they are, learning disabilities are not often explicitly indicated in categories of disability.²⁰⁸ Furthermore,

²⁰⁵ S Hollings, 'Implementation barriers of inclusive education and their impact on stakeholders: A review of the literature' (2021) 2(1) *International Journal of Childhood Education* 27, 39.

²⁰⁶ United States Agency for International Development (USAID), 'Are we fulfilling our promises? Inclusive education in sub-Saharan Africa' (USAID 2020) 10.

²⁰⁷ M Adujna and others, 'Children with disabilities in Eastern Africa face significant barriers to access education: A scoping review' [2022] *International Journal of Inclusive Education* 8.

²⁰⁸ *ibid.*

different academic scholars such as Abosi, Adugna and others, and Okyere, Aldersey and Lysaght²⁰⁹ reiterate the inability to accurately assess the reality of children with learning disabilities impedes on the capacity to develop effective and relevant policies, as well as monitor implementation. Therefore, the policies are not able to reflect the reality on ground and thus do not appropriately protect the needs of children with learning disabilities.

UNICEF published a leaflet in 2017 providing an overview of General Comment 4; the document highlights approaches governments can adopt to enforce inclusive education. Some of these examples can be employed as best practices to mitigate the institutional barriers discussed. For better budget allocation, governments must develop a national plan of action which explicitly details the number of children who must be accounted for, what action will be taken to see the realisation of the plan and, most importantly, time frames of when to achieve these objectives. This will help to determine better how much funds are required.²¹⁰ Governments must be proactive in developing the appropriate laws and policies that are in line with the CRPD and the ACRWC guidelines.

4.3.2 *Informational barriers*

Informational barriers refer to the lack of knowledge, training, workshops, sensitisation of children with learning disabilities to educators and guardians, which obstructs the realisation of inclusive education.²¹¹ Informational barriers have been outlined in several state party reports submitted to both the CRPD and the ACRWC Committees. For example, the Malawi government highlighted challenges to the realisation of article 24, namely a 'lack of knowledge and skills in teaching children with disabilities, inadequate training and learning resources ... [and] ... a lack of specialist teachers in secondary schools as compared to primary school teachers'.²¹²

²⁰⁹ O Abosi, 'Educating children with learning disabilities in Africa' (2007) 22(3) Learning Disabilities Research & Practice 196. See also C Okyere, HM Aldersey and R Lysaght, 'The experiences of teachers of children with intellectual and developmental disabilities in inclusive schools in Accra, Ghana' (2019) 8 Journal of Research in Special Educational Needs 1; Adugna and others *ibid* 9.

²¹⁰ UNICEF, 'Inclusive education – Understanding article 24 of the Convention on the Rights of Persons with Disabilities' (UNICEF 2017) <www.unicef.org/eca/sites/unicef.org/eca/files/IE_summary_accessible_220917_0.pdf> accessed 11 October 2022.

²¹¹ USAID (n 206) 2.

²¹² ACERWC, 'Concluding observations and recommendations on the initial report of the Republic of Malawi on the status of implementation of the African Charter on the Rights and Welfare of the Child' (2016) para 171.

The need for increased sensitisation of teachers

One of the leading problems for children with learning disabilities is the scarce availability of trained teachers in special needs education.²¹³ According to the UNESCO Institute for Statistics 2016 report, sub-Saharan Africa experiences the ‘worst teacher shortages’, predominantly qualified special needs teachers.²¹⁴ With a limited number of skilled teachers, the needs of children with learning disabilities are often overlooked.

Mokaleng and Möwes conducted research of a high school in Omaheke region of Namibia to assess the implementation of inclusive education, with 90 participants, all of whom were teachers from randomly selected secondary schools.²¹⁵ Some of the findings emphasise the need for sufficient training of teachers to effectively institute inclusive education for children with learning disabilities, this represented the opinion of an estimate of 94% of respondents.²¹⁶ A striking 82% expressed the opinion that educators were not equipped with adequate knowledge concerning interaction with children with learning disabilities or ‘special needs’.²¹⁷ Furthermore, 77% were of the view that the lack of insufficient knowledge on educating children with special needs fosters negative attitudes of teachers.²¹⁸ From this study, it is evident that teachers need to be more informed on inclusive education approaches and understanding how to work with children with learning disabilities. Until this approach is adopted, inclusive education will not be successfully realised.

To further illustrate existing informational barriers, a study of the national policy concerning inclusive education in Tanzania uncovered that many of the respondents were of the view that teachers did not have sufficient knowledge or expertise to appropriately support children

²¹³ A Chitiyo and CG Dzenga, ‘Special and inclusive education in Southern Africa’ (2021) 1(1) *Journal of Special Education Preparation* 55, 59.

²¹⁴ UNESCO Institute for Statistics, ‘The world needs almost 69 million new teachers to reach the 2030 education goals’ (UNESCO 2016) 2.

²¹⁵ M Mokaleng and AD Möwes, ‘Issues affecting the implementation of inclusive education practices in selected secondary schools in the Omaheke Region of Namibia’ (2020) 9(2) *Journal of Curriculum and Teaching* 78, 79.

²¹⁶ *ibid* 82.

²¹⁷ *ibid*.

²¹⁸ *ibid*.

with disabilities within the classroom.²¹⁹ One of the participants was a programme officer of a NGO and they also reinforced the opinion by stating that '[m]any of the schools lack special education teachers. So, you find many children there as routine; they are there, but they are not benefitting really'.²²⁰ The lack of teacher training has negative implications for children with learning disabilities in receiving inclusive education. This also makes it difficult to make informed decisions as a teacher that will enable a child to attain the best possible education.

The importance of early assessment and identification of children with learning disabilities

Another barrier for children with learning disabilities lies in the lack of early assessment or primary knowledge to the guardian regarding identification of a child with learning disabilities. In Namibia, it was found that despite acknowledgement in schools of children with disabilities, many are not formally diagnosed which contributes to appropriate information being shared.²²¹ The responses of the participants exhibit the lack of understanding and comprehension of what learning disabilities involve, for example, one respondent said, 'I think it is when a child has got a problem in thinking and cannot concentrate or listen to what he is told ... I don't know'.²²² This study established that most information was retrieved from informal sources like friends and family, who are not necessarily educated in the field of learning disabilities, however this has enabled them to gain a moderate understanding of their child with a learning disability. Participants indicated the lack of formal information and services accessible.²²³

Moreover, to highlight the lack of early assessment, a study in Ghana of children with intellectual and developmental disabilities found that the participants did not acknowledge themselves to have an intellectual or developmental disability but were able to recognise that they struggle

²¹⁹ AMB Braun, 'Barriers to inclusive education in Tanzania's policy environment: National policy actors' perspectives' (2022) 52(1) *Compare: A Journal of Comparative and International Education* 110, 122.

²²⁰ *ibid.*

²²¹ C Taderera and H Hall, 'Challenges faced by parents of children with learning disabilities in Opuwo, Namibia' (2017) 6(0) *African Journal of Disability* 1, 5.

²²² *ibid.*

²²³ *ibid.* 6.

academically.²²⁴ One of the respondents conveyed that they face difficulty in completing assignments, reading and examinations; however, she enjoys certain subjects. In an observation of a classroom, it revealed that the actions of many of the students who most likely had an intellectual or development disability were perceived by teachers as ‘behavioural challenges’.²²⁵ A student expressed that lack of focus during class lessons makes it difficult to digest the information effectively, they enjoy completing tasks but struggle with comprehension while the teacher is teaching, and thus get distracted.²²⁶ This scenario illustrates the necessity of early identification and assessment of children with learning disabilities to foster an encouraging environment for them to learn in.

Late assessment hampers the realisation of inclusive education for children with learning disabilities and can affect a child from reaching their full potential through education as this often causes a later start to education due to stigma and other factors.²²⁷ For example, Ethiopia does not have a normative instrument guiding diagnosis of learning and development disorders, and there is limited access to education or clinics for referrals in rural areas.²²⁸ Furthermore, children who are diagnosed with autism, for example, face stigma and social exclusion, are often denied acceptance into mainstream schools or expelled.²²⁹ This is a similar situation to what is found in Rwanda where private schools discriminate against children with learning disabilities by not enrolling them.²³⁰

4.3.3 *Environmental barriers*

Environmental barriers imply inadequacy of the ‘physical environment, social support ... [or] ... social network’.²³¹ The reluctance of providing support to teachers to enable them to enforce a flexible curriculum continues to obstruct the realisation of inclusive education.

²²⁴ Okyere, Aldersey and Lysaght (n 209) 5.

²²⁵ *ibid.*

²²⁶ *ibid.*

²²⁷ Adugna and other (n 207).

²²⁸ *ibid.*

²²⁹ *ibid.* 9.

²³⁰ *ibid.*

²³¹ L Lee and others, ‘Identifying key environmental barriers experienced by persons with mild, moderate, or severe disability in Bankim Health District, Cameroon: A policy-targeted secondary analysis of data obtained with the World Bank and WHO model disability survey’ (2021) 79(95) Archives of Public Health 1, 4.

In Okyere, Aldersey and Lysaght's study of inclusive education for children with intellectual disabilities in Ghana in 2019, the results of the study show that teachers did not provide substitution to assignments or alternative assessments that would accommodate different kinds of learners.²³² To illustrate, only one of the students disclosed that her teacher provided an alternate assignment, however, the rest of the students that participated reported that 'there were no explicit modifications and adaptations in instructions, assignments and tests for participants across all observations'.²³³ Implementing inclusive education entails more than just placing children with learning disabilities in a classroom with other students; however, the lack of initiative from educational institutions in providing suggestions or guidance to teachers hinders the full realisation of inclusive education.²³⁴ In this same study, to further highlight how the same learning approach was used for all, the researchers highlighted how teachers taught for a set amount of time and gave all students the same amount of time to complete the assignment which does not consider the needs of different children.²³⁵ In addition, students faced the same consequences for failure to submit assignments at the prescribed time, for example, 'in another school and classroom, another participant ... was not allowed to go for lunch break because of not completing their assignment'.²³⁶

Kuyini and others developed an inclusive education manual, and one of the modules places explicit focus on teaching approaches and strategies for children with learning disabilities.²³⁷ The best practice to improve environmental barriers is to have an effective teacher who is able to make adaptations to meet the individual needs of students. The manual outlines specific learning disabilities such as dyslexia, dysgraphia and dyscalculia; it describes common characteristics and challenges faced by learners with these disabilities and provides several strategies

²³² Okyere, Aldersey and Lysaght (n 209) 5.

²³³ *ibid* 6.

²³⁴ *ibid*.

²³⁵ *ibid*.

²³⁶ *ibid*.

²³⁷ R Kuyini and others, 'Disability rights awareness and inclusive education training manual' (CEVS Ghana, GES Special Education Division and Pathfinders Australia 2015) <www.un.org/disabilities/documents/unvf/DisabilityRights_InclusiveEduTrainingManual_10Dec2015.pdf> accessed 11 October 2022.

that can be adopted when working with these students.²³⁸ For example, a child with dyslexia is likely to experience challenges in reading, spelling and reversing letters and words; a teacher can use audio books to allow the student to listen and comprehend.²³⁹ Therefore, this manual can be adopted by other African countries to provide teachers with a suitable guideline on ensuring inclusive education within the classroom.

4.3.4 Socio-cultural barriers

According to African Child Policy Forum, children with disabilities in Africa ‘face a history of stigma, discrimination and exclusion from mainstream society’ which results in a denial of their human rights, and this is defined as a cultural barrier to inclusion.²⁴⁰ One of the recurring issues to realise inclusive education for children with learning disabilities is the long-standing negative traditional and cultural perceptions concerning disabilities.

Studies have been conducted in Namibia, Zimbabwe and Tanzania which support these claims. For example, it was found in Namibia that many believe disability is due to supernatural forces, including the likes of ‘witchcraft, sinful family relationships or practices, punishment from God, curses from ancestors or bad omen, and bad luck’.²⁴¹ The link between supernatural forces as an underlying cause of disability is also expressed in the Africa Disability Protocol in defining ritual killings against PWDs and under article 11 on harmful practices. Furthermore, the ACRWC has a provision protecting children from harmful social and cultural practices. Since the rights in the ACRWC are ‘interdependent, indivisible and mutually reinforcing’,²⁴² this must be implemented to realise article 11(3) on inclusive education for children with learning disabilities.

A study in Tanzania further investigated negative attitudes towards inclusive education for children with disabilities. It grouped the findings

²³⁸ Kuyini and others (n 237) 45.

²³⁹ *ibid* 46.

²⁴⁰ African Child Policy Forum, ‘The African report on children with disabilities’ (African Child Policy Forum 2014) 29 <<https://africanchildforum.org/index.php/en/sobipro?sid=175>> accessed 10 October 2022.

²⁴¹ Chitiyo and Dzenga (n 213) 61.

²⁴² ACERWC, ‘General Comment 5 on state party obligations under the African Charter on the Rights and Welfare of the Child (article 1) and systems strengthening for child protection’ (2018) 6.

into two categories, the first is negative attitudes concerning the need for children with disabilities to be educated, and the second is doubts about the benefits of inclusive education.²⁴³ Respondents in the study expressed the common belief amongst teachers, parents, members of the community and others that children with disabilities are not competent enough to attain an education, and the following sentiments were shared: 'A disabled child cannot get an education ... A disabled child cannot learn ... People with disabilities have nothing to do with education'.²⁴⁴ Secondly, many believe that the inclusion of children with disabilities will not be a conducive environment and should be hidden or enrolled in special schools.²⁴⁵ Participants in the study cited examples of other students and teachers discriminating against children with disabilities in the same classroom and one expressed 'a regular teacher is meant for regular people'.²⁴⁶

These socio-cultural barriers further perpetuate the marginalisation of children with learning disabilities and are one of the constraints to realising inclusive education for these children. Consequently, information dissemination must combat the myths that exist. Unlearning is necessary to shift cultural attitudes and create a conducive environment for children with learning disabilities.

4.4 CONCLUSION

To conclude, Kenya has made significant progress in realising inclusive education and can be a learning point for many countries. However, despite this, there are still some areas which can be improved in the SPLTD framework. The issue of overcrowded classrooms can be addressed in policy to strengthen it and lead to the successful realisation of the right to education. Uganda has adopted a different approach to inclusive education than Kenya; protections are provided across many laws instead of having specific legislation. However, this raises the issue of missed opportunities as significant gaps in Uganda can be mitigated to ensure better access to inclusive education. For starters, Uganda should enact an inclusive education-specific policy, which could have used the abridged curriculums to clarify its position on inclusive education.

²⁴³ Braun (n 219) 119.

²⁴⁴ *ibid.*

²⁴⁵ *ibid* 120.

²⁴⁶ *ibid.*

Furthermore, many barriers impede the realisation of inclusive education for children with learning disabilities in Africa. There are some common trends which have been identified across the continent, especially when it comes to appropriate information. There is a shortage of specialised teachers; this results in children with learning disabilities being placed in classrooms that do not cater for them. Other barriers are institutional, environmental and socio-cultural. These barriers are not mutually exclusive and instead collectively impact children with learning disabilities from enjoying their right to inclusive education.

5.

CONCLUSION AND RECOMMENDATIONS

5.1 CONCLUSION

This research dissected the right to inclusive education for children with learning disabilities in Africa, with a particular emphasis on lessons from Kenya and Uganda as exemplars. The primary objective of the mini-dissertation was to assess the limitations to realising inclusive education for children with learning disabilities in Africa and evaluate obligations of states parties under the ACRWC and the CRPD. The main question posited to attain this objective was to interrogate the extent to which state parties to the ACRWC and the CRPD have implemented inclusive education based on article 11(3) of the ACRWC and article 24 of the CRPD, the approaches to inclusive education that exist with a focus on Kenya and Uganda, barriers and missed opportunities and, lastly, the best practices to mitigate the barriers raised.

Throughout the research and analysis herein, it is apparent that the normative frameworks guiding inclusive education legislation and policies at an international level are established under article 11(3) of the ACRWC and article 24 of the CRPD. The ACRWC requires that appropriate measures must be instituted for gifted, female and disadvantaged children under article 11(3), while the CRPD explicitly provides for inclusive education under article 24. This research argues that this category provides for the specific recognition of children with learning disabilities when developing policies and legislation.

Based on these human rights treaties, legislation and policies were assessed in different African countries to understand the extent to which state parties have domesticated these instruments with particular focus on national strategies promoting and protecting inclusive education. General trends observed in Ghana, Namibia and Malawi revealed that

policies exist at the national level to incorporate inclusive education in the national education framework. However, the implementation of the policy is rather discriminatory as it creates two systems of education for abled and disabled children, separately. Some of these policies recognise disabilities more broadly, and often when there is specificity, in most cases, it is for physical disabilities or hearing impairments, for example.

After situating the reality and shortcomings of existing inclusive education frameworks for children with learning disabilities, a particular focus was placed on the frameworks in Kenya and Uganda, considering both countries have been making positive developments towards inclusive education since post World War II.²⁴⁷ More specifically, in Kenya, the 2018 SPLTD and 2010 Constitution were explored, providing the legal framework for inclusive education for children with learning disabilities. The 2018 SPLTD stipulates specific categories for learning disabilities and intellectual disabilities and even goes further to include a stand-alone category of autism. In addition, the implementation guidelines were developed, signalling a lesson learned from prior frameworks like the 2009 SNE Framework. Furthermore, recent studies conducted in Nairobi and Marsabit indicate the willingness of and a better understanding of inclusive education and learners with disabilities which is a positive development.

In Uganda, the legal framework is slightly different in that inclusive education is provided for broadly; however, the 2006 PDA provides a clear definition of what constitutes inclusive education, which is argued as a basis for children with learning disabilities to be catered for in the classroom. A case study of the Karamoja region was used to demonstrate the approach to inclusive education for children with disabilities. There were no special schools in this region, causing children of all capacities to be placed in the same classroom. It yielded positive results as teachers were willing to accommodate students with learning disabilities and ultimately provide a conducive environment recognising their right to inclusive education.

²⁴⁷ EW Kiru, 'Special education in Kenya' (2019) 54(3) *Intervention in School and Clinic* 181, 183. See also Uganda Society for Disabled Children and Enable-Ed, 'Inclusive education in Uganda – examples of best practice' (Uganda Society for Disabled Children and Enable-Ed 2017) 2 <<https://afri-can.org/wp-content/uploads/2017/11/Inclusive-Education-in-Uganda-examples-of-best-practice-March-2017-.pdf>> accessed 27 August 2022.

Although Kenya and Uganda arguably have progressive legislation and research findings concerning inclusive education, there are opportunities to strengthen existing measures. In both countries, one of the guidelines that may have provided further clarity is the suggested classroom size required to ensure proper implementation; in Kenya, this could have been stipulated in the 2018 SPLTD and Uganda, the 2006 PDA. Whilst Kenya is applauded for the explicit recognition of learning disabilities; this can be strengthened by expanding the scope of learning disabilities that must be considered when implementing inclusive education. The mention of other learning disabilities like attention deficit/hyperactivity disorder may be beneficial for teachers and learners to identify and understand these disabilities. The most significant missed opportunity in Uganda can be found in the 2022 abridged curriculum, which does not mention inclusive education nor provides suitable alternatives for children of different learning capacities. In addition to these missed opportunities, other barriers influence the realisation of the right to inclusive education in Kenya, Uganda and Africa at large.

The different issues impeding the right to inclusive education for children with learning disabilities in Africa are cross-cutting and were characterised into four categories: institutional, informational, environmental and socio-cultural barriers discussed in chapter four of this dissertation. The barriers generally include inadequate funding, poor data collection mechanisms and outdated inclusive education policies at the institutional level. The informational barriers comprise insufficient sensitisation of teachers, causing many to be underqualified to teach children with learning disabilities. Another significant informational barrier is the late assessment and identification of children with learning disabilities, resulting in their needs not being understood and not being accommodated. The environmental barriers that hamper the right to inclusive education for children with learning disabilities are academic curriculum and classroom size, preventing them from receiving individualised attention. Trends were identified in some countries like Rwanda, where children with learning disabilities experience discrimination when enrolling in certain institutions. Finally, there are socio-cultural barriers like the perpetuation of negative and cultural stereotypes of learning disabilities. These attitudes continue to perceive children with learning disabilities as lacking the capacity to be educated and undeserving of a positive environment.

The best practices to mitigate the barriers mentioned include development of national plan of action with time frames so that achieving inclusive education is intentional. Furthermore, governments should develop and enforce legislation that is aligned with obligations under the CRPD and the ACRWC. Environmental barriers can be alleviated through the adoption of manuals like the one produced by Kuyini and others²⁴⁸ which provide for multiple approaches to accommodating the individual needs of learners with disabilities. Socio-cultural barriers can be tackled if constant information sharing takes place to create a shift in negative perceptions. These best practices are not mutually exclusive and can be applied collectively to enforce inclusive education. It is based on the findings of this research that the following recommendations are provided.

5.2 RECOMMENDATIONS

5.2.1 Ratification of the Africa Disability Protocol

African states are called upon to ratify the Africa Disability Protocol to strengthen the protection and promotion of children with learning disabilities in Africa. The Protocol reflects an Afrocentric perspective and expounds on the rights enshrined in the CRPD. The preamble defines harmful practices that negatively impact PWDs and mentions culture and superstition as some underlying factors. As illustrated in chapter four, these practices are reflected in sociocultural attitudes, which impede the full realisation of inclusive education. The right to inclusive education is recognised under article 16(3), which requires states parties to fully realise ‘inclusive quality education’. In this extensive provision, seven sub-articles expand on how to ensure inclusive education. For example, article 16(3)(e) states that ‘reasonable, progressive and effective individualised support’ is provided and article 16(3)(g) requires that ‘multi-disciplinary assessments are undertaken’. These provisions explicitly outline inclusive education methods suitable for children with learning disabilities.

²⁴⁸ R Kuyini and others, ‘Disability rights awareness and inclusive education training manual’ (CEVS Ghana, GES Special Education Division and Pathfinders Australia 2015) <www.un.org/disabilities/documents/unvf/DisabilityRights_InclusiveEduTrainingManual_10Dec2015.pdf> accessed 11 October 2022.

5.2.2 Clarification of terms

For children with learning disabilities to adequately benefit from inclusive education frameworks, it is crucial that learning disabilities are recognised explicitly in national legislation and policy frameworks and that definitions are provided to ensure clarity in implementation. It would be helpful if definitions were provided in an annexe, as this could potentially ensure better implementation of the policy and help teachers and learners identify learning disabilities.

It should also be noted that some African countries, like Uganda, use intellectual disability interchangeably with learning disability. As indicated in chapter one, learning disabilities refer to weaknesses in academic skills like listening, reading, writing or speaking.²⁴⁹ However, some sources assessing inclusive education refer to intellectual disability, but do not provide clear definitions. For example, Ojok and Wormnæs merely state that the term is used instead of ‘special needs children’.²⁵⁰ Thus, to avoid inconsistency and confusion, it is advisable that governments provide clear definitions of either intellectual or learning disabilities in legislation and other frameworks.

5.2.3 Guidelines on the appropriate teacher-to-student ratio

One of the factors that hampers the realisation of inclusive education for children with learning disabilities is overcrowded classrooms, making it challenging for teachers to accommodate the individual needs of learners. However, the policies examined in this research illustrate that this issue is not addressed in a legal framework that would hold institutions accountable. Therefore, a guideline of the appropriate class size will strengthen inclusive education for children with learning disabilities. Frameworks underpinning inclusive education must be intentional to serve children with learning disabilities.

²⁴⁹ O Abosi, ‘Educating children with learning disabilities in Africa’ (2007) 22(3) Learning Disabilities Research & Practice 196.

²⁵⁰ P Ojok and S Wormnæs, ‘Inclusion of pupils with intellectual disabilities: primary school teachers’ attitudes and willingness in a rural area in Uganda’ (2013) 17(9) International Journal of Inclusive Education 1003, 1008.

5.2.4 Budgetary allocation

Many African countries need appropriate funding and resource allocation, as discussed in chapter four, which makes it difficult to create proper infrastructure. Governments should collate data on children with learning disabilities in education to ensure that a sufficient budget is allocated to ministries of education to carry out obligations under the right to inclusive education as outlined in article 11(3) of the ACRWC and article 24 of the CRPD.

5.2.5 Curriculum development

To appropriately accommodate children with learning disabilities within the classroom, curriculum development is crucial. For an appropriate curriculum to be developed, educators must ‘accurately identify the specific needs, interests, and motivators of each learner with severe and profound learning needs’.²⁵¹ Observation is crucial in assessing the individual needs of children with learning disabilities to develop a suitable curriculum.²⁵² It builds on this further by providing guidelines on conducting an observation, characteristics to look for and a list of questions to consider.²⁵³ There is also an example of an observation form; therefore, this framework can serve as a guiding principle for different African governments to adopt and amend to fit the African context where necessary.

It is also recommended to consider different strategies, like ‘co-teaching ... [and] differentiated instruction’²⁵⁴ that can be implemented to support children with learning disabilities in a classroom. An example of a co-teaching method is where one teacher has the responsibility of providing instructions and delivering content, and the other teacher is solely focused on providing additional support to children with learning disabilities, as well as other children who may require it.²⁵⁵ This method

²⁵¹ South Lanarkshire Council, ‘Framework for supporting pupils with severe and profound learning needs – Curriculum for excellence’ (South Lanarkshire Council 2015) 13 <www.southlanarkshire.gov.uk/downloads/file/9818/framework_for_supporting_pupils_with_severe_and_profound_learning_needs> accessed 15 October 2022.

²⁵² *ibid* 10.

²⁵³ *ibid* 27.

²⁵⁴ J Ford, ‘Educating students with learning disabilities in inclusive classrooms’ (2013) 3(1) *Electronic Journal for Inclusive Education* 2.

²⁵⁵ *ibid* 6.

allows the teacher to accommodate children's individual needs within the classroom. However, as expressed in chapter four, a shortage of teachers is one of the barriers to realising inclusive education; thus, it may be challenging to employ co-teaching. Nevertheless, this practice is encouraged. Another strategy is differentiated instruction which refers to educators providing children with learning disabilities different instructions and materials based on their needs.²⁵⁶ These strategies can be included in the education policies and other legal frameworks which provide for inclusive education.

5.2.6 Data collection

The prevalence of children with learning disabilities is underreported due to a myriad of reasons, such as parents' lack of knowledge of a learning disability and insufficient government resources. It is crucial that data collection mechanisms are developed, with the appropriate human and technical capacity, to ensure that appropriate support is provided to children with learning disabilities in Africa. Updated statistics will translate to informed decisions, and as a result, influence existing legislation and policy frameworks.

5.2.7 Responding to barriers

It is crucial for the government to support learning institutions by organising capacity-building workshops for teachers and parents; this will help address informational and social barriers, as it creates awareness and promotes an environment to support children with learning disabilities. As discussed above under 5.2.4., budgetary allocation will help to address environmental and institutional barriers, as one of the root issues discovered in the findings is the lack of adequate funding.

²⁵⁶ Ford (n 254) 9.

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