

THE RIGHT TO INCLUSIVE EDUCATION IN BOTSWANA: PRESENT CHALLENGES AND FUTURE PROSPECTS

Obonye Jonas*

Summary

For many years children were prevented from enjoying their rights. They were regarded as ‘... [mere] recipients of welfare rather than holders of specific rights’.¹ This conception has left children vulnerable to exploitation without human rights safe-guards. While all children are vulnerable, those with disabilities are exposed to increased vulnerability on account of negative traditional beliefs,² societal stereotypes, stigma and ignorance. This article proceeds on the assumption that equipping children with disabilities with necessary education and skills through inclusive education will go a long way in ensuring both their personal and socio-economic development. It argues that the delivery of inclusive education to learners will be more effective if done through a human rights model. Through this model, the inherent equality of all people is recognised regardless of differences, abilities or disabilities. The article argues that despite the fact that inclusive education has gained immeasurable currency in modern pedagogy, Botswana has not done enough to cater for the education needs of children with disabilities and address the challenges that they face.

1 Introduction

The demand for social justice in the education sector, particularly in relation to children with disabilities has gained impetus in the world,

* LLB (UB); LLM (Pretoria); Senior Lecturer, Law Department, University of Botswana and Practising Attorney with Jonas Attorneys. E-mail: jonas15098@yahoo.co.uk or obonye.jonas@mopipi.ub.bw.

1 T Kaime *The African Charter on the Rights and Welfare of the Child: A socio-legal perspective* (2009) 12.

2 In many parts of Africa, including in Botswana, it is widely believed that disability is a result of witchcraft. See G Dart ‘Provision for learners with special educational needs in Botswana: A situational analysis’ (2007) (22) *British Journal of Special Education* 56. For a contrary view, see B Ingstad ‘The myth of the hidden disabled: A study of community based rehabilitation in Botswana’ unpublished PhD thesis, University of Oslo, 1990, who argues that societies are beginning to embrace PWDs.

especially over the latter half of this century. Previously, in Botswana as was the case with many African countries, children with disabilities were denied opportunities to attend normal schools. They were mostly removed by their keepers from public view, hidden and isolated as they were considered to be a curse. However, in the last few decades, the world has experienced the emergence of a human rights movement whose objective is to lobby states to guarantee the fundamental rights and freedoms of persons with disabilities. One of the themes that emanated from this movement is the protection and promotion of the right of children with disabilities to receive education. Thus, in the intervening years, there has been a remarkable paradigm shift from excluding children with disabilities from education to their inclusion. This transformation was inspired by amongst other things, the children's rights theory, which at its rudimentary level, postulates that all children are worthy of dignity and concern to grow up and become active citizens. In a nutshell, the message is that all children are children and deserve to be treated and live as children. Today, more and more learners with special needs are studying under one roof, side by side with their peers who do not suffer from any disabilities. This concept is commonly referred to as inclusive education. The concept of inclusive education has western origins where it began taking roots in the 1980s. Today, it has become a secular religion in education settings throughout the world. Botswana has committed to providing education for *all* through its Vision 2016 Agenda.³ However, despite the fact that inclusive education has gained immeasurable currency in modern pedagogy, Botswana has not done enough to cater for the education needs of and address challenges faced by children with disabilities. This article identifies the need for Botswana to put in place a comprehensive system of laws and properly coordinated policies to facilitate the successful implementation of an inclusive education strategy.

1.1 The meaning of inclusive education

According to Guidelines of the United Nations Educational Scientific and Cultural Organisation (UNESCO), inclusive education is:

[T]he process of addressing and responding to the diversity of needs of all learners through increasing participation in learning, cultures and communities, and reducing exclusion within and from education. It involves changes and modifications in content, approaches, structures and strategies, with a common vision covering all children of the appropriate age range and a conviction that it is the responsibility of the regular system to educate all children ...⁴

³ Botswana National Vision, Presidential Task Force (1997).

⁴ UNESCO 'Guidelines for inclusion: Ensuring access to education for all' (2005) 13, available at <http://www.disabilityrightsfund.org/node/445> (accessed 23 April 2013).

For Staub and Peck, inclusion entails, 'full-time placement of children with mild, moderate and severe disabilities in regular classrooms'.⁵ In the view of Guthrie and Waldeck:

Inclusiveness in education is a rights-based approach to education, i.e. the right of a student to have equal access to education. Its proponents argue that inclusion is concerned with the protection of human rights for all students. Inclusion represents a philosophical shift from related practices such as 'mainstreaming' and 'integration' where the focus is on placing students with disabilities in mainstream settings with the aspiration that all students would benefit from the experience. Inclusion places a focus on the quality of the participation of the student with disabilities and involves welcoming students with disabilities as full members of the group and values that student for their contribution. In the context of disability discrimination, inclusiveness embraces the notion that separation of students by reason of differences arising out of their disability is detrimental not only to the student with a disability but also to all other participants in the education institution as well.⁶

The inclusion model or movement requires that a child with a disability be placed in the same education environment he or she would otherwise have been placed in if it were not for the disability. Although inclusive education has gained wide acceptance in Botswana, especially in academic circles, the media and within government through texts of its policies, there has not been any critical engagement with its meaning, application and relevance within the context of Botswana.⁷ It has been said that there is acute scarcity of empirical literature in the area and most of the published works are anecdotal and reflect no more than personal opinions of authors.⁸ In other words, the available literature in the country on the subject is in the realm of *abstractum* and theory and does not speak to the lived realities of inclusive education. The Ministry of Education, Skills and Development in the country has conceded the lack of proper understanding of the concept of inclusive education by stakeholders when it stated,

most stakeholders do not understand the benefits that will accrue from a comprehensive implementation of the Special Education programmes to both special needs learners and the mainstream learners. It is important that all stakeholders should be sensitised to these benefits as well as the need to support these programmes.⁹

5 D Staub & CA Peck 'What are the outcomes for nondisabled students?' (1995) 52 *Educational Leadership* 36.

6 R Guthrie & E Waldeck 'Disability standards and inclusiveness in education: A review of the Australian landscape' (2008) 9 *International Journal of Discrimination and the Law* 133 141.

7 S Mukhopadhyay 'Factors influencing the practice of inclusive education in Botswana primary schools' unpublished PhD thesis, University of Botswana, 2009 97.

8 As above.

9 Division of Special Education Task Force (2001) 9.

1.2 Inclusion versus integration

For clarity in understanding and conceptualisation purposes, it is apposite to distinguish 'inclusion' from 'integration' from the outset. This distinction is not pedantic but bears practical implications. The concept of integration was introduced into the disability discourse after the Second World War, in acknowledgement of increasing awareness of the potentialities and capabilities of persons with disabilities.¹⁰ Integration simply means introducing learners with disabilities into a regular learning environment without modifying and adapting the curricula to any great extent to suit their special needs.¹¹ The learner is usually given some additional support to help him or her to do classroom work. However, the intention is to make the learner fit the programme or curriculum rather than to make the programme or curriculum fit the learner.¹² Proponents of the idea of integration point out that it ensures egalitarianism and that it helps in harnessing the untapped potential of persons with disabilities.¹³ Relatedly, its adherents also place premium on financial and opportunity costs expended in specialised schools supporting learners who could be self-sufficient and productive.¹⁴ On the other hand, inclusion is a more radical model. It requires the transformation and adaptation of the school environment curriculum, teaching and learning methods, organisation, and prudent management of resources to ensure that all learners are enabled to optimally participate in mainstream education regardless of their disability.¹⁵

2 The merits of inclusive education

Inclusive education calls for the development of a flexible system that entails a wide range of learning environments and different kinds of support structures so that learners can learn effectively according to their intellectual capacities, skills, talents and interests. It is designed to be profitable or useful to disadvantaged and vulnerable learners through finding ways of lessening the hurdles which exclude or hinder them from accessing education or achieving their educational potential. In the words of Banks, inclusive education could help with reducing prejudice in the teaching-learning process thus ultimately helping learners to develop

10 See para 4, UN General Assembly Resolution A/RES/48/96 (4 March 1994).

11 S Chhabra et al 'Inclusive education in Botswana: The perceptions of school teachers' (2010) 20 *Journal of Disability Policy Studies* 219.

12 As above.

13 D Hodgson 'The educational rights of persons with disabilities: International human rights law and Australian law perspectives' (2012) 12 *International Journal of Discrimination and the Law* 183 198.

14 D Neal 'The right to education: The case of special education' (1982) 54 *Australian Quarterly* 147 150.

15 As above.

positive democratic attitudes and actions.¹⁶ Overall, the concept of inclusive education is flexible in nature and character and thus permits teachers to pay attention to how each learner can learn at an optimal level and unleash his or her potential. The concept also adopts a multi-vector approach in implementing the provision of inclusive education, recognising that although the government must be the predominant role-player, as a duty-bearer in the provision of inclusive education, other relevant stakeholders must be involved in the process to make inclusive education a reality.

To this end, successful implementation of inclusion strategies is dependent to a large extent on the attitudes of teachers and the supporting staff, since they are the ones responsible for the day-to-day implementation of inclusion policies and strategies.¹⁷ Close cooperation and collaboration of special educators and regular teachers is also imperative if optimal inclusion is to be realised.¹⁸ The Salamanca Statement on Principles, Policy and Practice in Special Needs Education¹⁹ describes inclusion as 'the most effective means of combating discriminatory attitude, of creating welcoming communities, building an inclusive society and achieving education for all ...'²⁰ It further states that education for children with disabilities must be extended to them within the context of a regular education setting.²¹ Beiter has interpreted this to mean that there should not be two parallel education systems: one for the children with disabilities and one for the non-disabled, but rather that education for children with disabilities must be provided in integrated and mainstreamed education set-ups, of course with necessary modifications to suit learners with disabilities.²² Thus, the utilitarian value of the inclusion model lies in its emphasis on restructuring, transforming and adapting school programmes, curricula, revising assessment procedures, applying appropriate technology and adopting fitting practices 'in order to accommodate a much wider range of ability' and aid learning, communication and mobility.²³

3 The de-merits of inclusive education

Despite the generally acknowledged utility of the inclusive education approach, there are commentators who argue that it does more harm than good. They argue that it is a lofty policy driven by unrealistic expectations

16 JA Banks *An introduction to multicultural education* (2008) 34.

17 Guthrie & Waldeck (n 6 above) 142.

18 Hodgson (n 13 above) 200.

19 Adopted by the World Conference on Special Needs Education: Access and Quality (Salamanca, Spain, 7-10 June 1994), available at unesdoc.unesco.org/images/0009/000984/098427eo.pdf (accessed 21 April 2013).

20 Salamanca Statement (n 19 above) principle 2.

21 As above.

22 KD Beiter *The protection of the right to education by international law* (2006) 96.

23 P Westwood *Commonsense methods for children with special educational needs* (2007) 187.

in which schools or policy-makers force learners into the regular mode of education.²⁴ It has also been contended that where inclusive education is emphasised, the socialisation part of education takes precedence over and to the detriment of academic education.²⁵ For opponents of inclusive education, socialisation cannot be the main goal of learning at the expense of academic education.²⁶ They argue that many inclusive education environments are cosmetic and without tangible benefits because these are based merely on the sitting of learners with disabilities in a regular class and feign normalisation without considering whether such learners participate and learn or not.²⁷ It has also been argued that inclusive education deprives learners with disabilities of a special classroom environment that is properly adapted to accommodate their specific needs.²⁸ It has been contended further that learners with disabilities always leave the regular education setting with low self-esteem or self-concept.²⁹ Some learners with disabilities have 'reported that life in the mainstream was characterized by fear, frustration, ridicule and isolation'.³⁰ It has also been said that inclusion may also lead to learners with disabilities being harmed or teased by regular education learners and their safety being endangered.³¹ Further, inclusion is said to have disadvantages even for regular class learners because an inclusive class is far more active than a regular class and this may have a disruptive effect on the learning progress of regular class learners.³²

Research has also shown that teachers consider inclusive education to be difficult and stressful to implement.³³ Studies conducted in Botswana have confirmed this view. For instance, in 2006, Brandon surveyed the attitudes of Botswana teachers of family and consumer sciences towards inclusive education and found that they were negative.³⁴ Another study conducted by Chhabra et al has shown that 'teachers in Botswana schools did not have favourable or supportive attitudes towards inclusion'.³⁵ This latter study also established that teachers in Botswana are reluctant to include learners who need specialised and individualised programs or modified programs.³⁶ Some of the identified problems associated with

24 SL Berg 'The advantages and disadvantages of the inclusion of students with disabilities into regular education classrooms' MSc, unpublished thesis, University of Wisconsin-stout, 2005 32.

25 As above.

26 As above.

27 As above.

28 As above.

29 As above.

30 SJ Salend *Creating inclusive classrooms: Effective and reflective practices* (2001) 27.

31 As above.

32 As above.

33 M Whiting & J Young *Integration: Social justice for teachers: Paper presented at the Australian Association for Research in Education Conference*, quoted in Chhabra et al (n 11 above) 221.

34 DP Brandon 'Botswana's family and consumer science teachers' attitude towards the inclusion of students with physical disabilities' (2006) 24 *Journal of Family and Consumer Science Education* 19.

35 Chhabra et al (n 11 above) 226.

36 Chhabra et al (n 11 above) 225.

inclusive education include overcrowded classrooms, inflexible timetables, unavailability of relevant teaching materials and inadequate specialist support.³⁷ In this regard, the study by Chhabra et al on the implementation of special education in Botswana indicates that teachers are concerned about the inadequate equipment and the non-availability of paraprofessionals in schools implementing inclusive education.³⁸ It may be that the resistance of teachers in the implementation of inclusive education also emanates from lack of support from the government. Despite the above criticisms, the mainstreaming of education opportunities through inclusive education has been said to possess both symbolic and practical significances: its symbolic significance is that all children or people are born with equal dignity and must not be unjustifiably differentiated. On the practical side, the mainstreaming underscores and guarantees equal rights and opportunities between children with disabilities and those that are non-disabled.³⁹

4 Understanding the concept of disability in a human rights context

The term 'disability' features prominently in this paper and it is important to place it in its proper perspective and context. The Convention on the Rights of Persons with Disabilities (CRPD) states that People with Disabilities (PWDs) include 'those who have long-term physical, mental, intellectual or sensory impairments which, in interaction with various barriers, may hinder their full and effective participation in society on equal basis with others'.⁴⁰ Although this definition concerns itself with the social model to disability, it suffices for purposes of this paper in giving insight in the subject under discussion. However, it is also important to note that the concept of disability has also assumed a human rights dimension. Traditionally, disability was not considered to be a human rights issue.⁴¹ The Human Rights Model only emerged in the 1980s.⁴² In

37 Chhabra et al (n 11 above) 221.

38 As above.

39 J Fortin *Children's rights and the developing law* (2003) 371.

40 Art 1 of the UN General Assembly, *Convention on the Rights of Persons with Disabilities: Adopted by the General Assembly, 24 January 2007, A/RES/61/106 (CRPD)*.

41 ML Perlin *International human rights and mental disability law: When the silenced are heard* (2012) 3.

42 Apart from the human rights model to disability there are two other models. (a) The medical model, which postulates that the 'problem' of PWDs is located in their physiological limitations. According to this model, the physiological condition of persons with disabilities itself is seen as a problem of disability. It views PWDs as wards of benevolent guardians because it considers their inability to perform 'properly' in mainstream society as cause for charitable intervention. (b) The Social Model which suggests that disability occurs as a result of interaction between PWDs and the environment, where environmental limitations or barriers such as human prejudice, institutional bottle-necks, amongst others impose restrictions upon persons with disabilities. This model posits that the failure of the environment to adjust to the special needs of PWDs accounts for the 'problem' of disability.

terms of this model, disability is viewed as a human rights issue and that 'problems' linked to any condition of disability are seen as inherent in external factors such as society's stereotypes, prejudices and artless perceptions on disability rather than from the persons with disability.⁴³ Consequently, according to this model, the state has an important duty to 'tackle socially created obstacles in order to ensure full respect for the dignity and equal rights of all persons'.⁴⁴ At a theoretical level, the human rights approach to disability concerns itself with how society subjugates PWDs and how this marginalisation can be best addressed.⁴⁵ As Quinn and Degener observe:

[T]he human rights perspective means viewing [PWDs] as subjects and not as objects. It entails moving away from viewing [PWDs] as problems toward viewing them as rights holders importantly, it means locating any problems outside the person and especially in the manner by which various economic and social processes accommodate the difference of disability or not as the case may be. The debate about disability rights is therefore connected to a larger debate about the place of difference in society.⁴⁶

In terms of the human rights model, there must be reasonable accommodation for people living with disabilities to avoid social differentiation. A human rights approach to disability 'obligates society to remove the attitudinal and physical barriers to equality and inclusion of PWDs'.⁴⁷ In this way, disability is considered within the context of diversity in terms of which persons with disabilities can establish and pursue their own concept of self-worth and dignified personhood. This idea led to the adoption of numerous instruments aimed at the promotion and protection of rights of PWDs at the UN level. Key amongst these is the CRPD.⁴⁸ Today it is readily accepted that disability is a human rights issue. However, the Bill of Rights of the Constitution of Botswana is silent on the rights of PWDs. This amounts to legislative neglect and partly accounts for the government's tepid attitude towards the protection and promotion of PWDs.

However, it should be noted that on 14 March 1995 Botswana ratified the Convention on the Rights of the Child (CRC)⁴⁹ and incorporated the bulk of its provisions into Botswana law through the Children's Act.⁵⁰ In terms of this treaty, the right to education to children imposes a duty upon

43 H Combrinck 'The hidden ones: Children with disabilities in Africa and the right to education' in J Sloth-Nielsen (ed) *Children's rights in Africa* (2008) 31.

44 G Quinn et al *Human rights and disability: The current use and future potential of United Nations human rights instruments in the context of disability* (2002) 10.

45 M Rioux & A Carbert 'Human rights and disability: The international context' (2003) 10 *Journal on Developmental Disabilities* 1.

46 Quinn et al (n 44 above) 10.

47 Perlin (n 41 above) 4.

48 Adopted on 13 December 2006, entered into force on 3 May 2008.

49 General Assembly resolution 44/25 of 20 November 1989, came into force on 2 September 1990. Botswana ratified this convention on 14 March 1995.

50 Act 8 of 2009.

states 'to make primary education compulsory and freely available for all'.⁵¹ The Convention on the Rights of the Child Committee (CRC Committee) has observed that inclusive education should be the model of choice for educating children with disabilities.⁵² The Committee further noted that the extent of inclusion within a given education system will vary, and further that '[a] continuum of services and programme options must be maintained in circumstances where fully inclusive education is not feasible to achieve in the immediate future'.⁵³ Thus, inclusion may extend from placement of all children with disabilities into a regular classroom to placement into a regular classroom 'with varying degrees of inclusion, including a certain portion of special education'.⁵⁴ The Committee has also recognised that the concept of inclusion is broad and goes beyond the fundamental question of how learners with disabilities can be accommodated within a classroom, programs or curricula.

5 Inclusion as a right under international law

As a prefatory note, it is important to note that Botswana is a dualist state. This means that provisions of international instruments do not create justiciable rights in the country unless they are legislatively incorporated into Botswana law. Despite this, Botswana courts cannot ignore relevant provisions of human rights instruments in their adjudicatory processes because these instruments lay down higher normative principles and legal imperatives which the country must incrementally gravitate towards achieving.⁵⁵ The CRPD is the first legally binding international instrument to lucidly, exclusively and comprehensively deal with the rights of persons with disabilities. In terms of article 7 of this instrument, states parties are obliged to take necessary and targeted measures to ensure the full enjoyment of rights and fundamental freedoms by children with disabilities on a comparable basis with children without disabilities. Article 24 is strikingly pertinent; it obliges states parties to establish an inclusive education system at every strata of learning.⁵⁶ It also forbids the exclusion of children with disabilities 'from the general education system on the basis of disability' or deprivation of 'access to an inclusive, quality and free primary education and secondary education on an equal basis with others

51 Article 28 thereof.

52 See General Comment No 9 of the CRC *What works in inclusive education*. Committee para 67, Committee on the Rights of the Child, General Comment No 9 *The rights of children with disabilities* (Forty-third session, 2007), UN Doc CRC/C/GC/9 (2007). Available at <http://www1.umn.edu/humanrts/crc/comment9.html> (accessed 22 April 2013).

53 General Comment no 9 (n 52 above) para 66.

54 Hodgson (n 13 above) 200.

55 For a detailed discussion on the position of international law in Botswana see O Jonas 'Corporal punishment in Botswana schools: A human rights perspective' (2012) 17 *International Journal of Law and Education* 78.

56 See art 24(1).

in the community in which they live'.⁵⁷ States parties to the Convention are also under a duty to ensure that reasonable accommodation is made for individuals with diverse needs, and that children with disabilities receive the necessary support within the regular education system to facilitate their learning.⁵⁸ To implement the provisions of the aforesaid, article 24 of the CRPD, the inclusion of PWDs in the mainstream education system must be done under three different track systems:

- The dual track system which provides for learners with special educational needs in one system and learners without disabilities in another and major system;
- The multi-track system, which caters for the needs of various groups in different, parallel systems;
- The one track system or the inclusive education system, which gathers all learners [those with disabilities and those without] in one system.⁵⁹

The latter track requires the adoption of a Universal Learning Design (ULD) 'characterised by the development of curriculum and the training of teachers to meet the various needs in a classroom'.⁶⁰ This approach seeks to eliminate environmental barriers to education for children with disabilities and ensure that they are fully included in the education system.⁶¹ The ULD offers a menu of differentiated learning activities that accommodate learners with different abilities.⁶² In a study done in 2008 under the auspices of the Curriculum Development Division in the Ministry of Education, it was recommended that Botswana must adopt the ULD approach to address the problems of access to the curriculum by learners with disabilities.⁶³ To date the recommendations of this study have not been implemented in the country.

57 See art 24 (2)(a) & (b).

58 Art 24(c)-(d). See also Rule 6 of the Standard Rules on the Equalisation of Opportunities for Persons with Disabilities which states in part that:

'States should recognize the principle of equal primary, secondary and tertiary educational opportunities for children, youth and adults with disabilities, in integrated settings. They should ensure that the education of persons with disabilities is an integral part of the educational system. General educational authorities are responsible for the education of persons with disabilities in integrated settings. Education for persons with disabilities should form an integral part of national educational planning, curriculum development and school organization'.

59 See SD Kamga 'Forgotten or included? Disabled children's access to primary education in Cameroon' (2013) 1 *African Disability Rights Yearbook* 27 30, referencing DR Mitchell 'Introduction' in D Mitchell (ed) *Contextualising inclusive education: Evaluating old and new international perspectives* (2005) 5.

60 As above.

61 As above.

62 As above.

63 See the Draft National Report on the Development of Education 'Inclusive education: The way of the future' (2008) 30.

The CRPD requires states parties to take measures to ensure that

the education of persons, and in particular children, who are blind, deaf or deaf-blind, is delivered in the most appropriate languages and modes and means of communication for the individual, and in environments which maximize academic and social development.⁶⁴

Against the backdrop of the above, supporters of the dual track and multi-track systems have been arguing that learners with special education needs should be separated from learners that are in mainstream education, especially where mainstream education is not satisfactory for this group of learners.⁶⁵ In the view of proponents of these systems, learners with special education needs belong to a special education set-up that is tailored for their specific needs for their development. In their view such an environment will permit them to learn optimally without being abused or ill-treated by their counterparts who do not suffer disabilities.⁶⁶

Comparative jurisprudence lends credence to this approach and the decision of the Supreme Court of Canada in *Brant Country Board of Education v Eaton* (the *Eaton case*)⁶⁷ is instructive in this regard. In this case, a twelve year old girl with cerebral palsy was unable to communicate through speech, sign language or other alternative communication system. She was also severely visually impaired, mobility impaired and wheel chair-bound. Unfortunately, she was placed in a regular class set-up despite the fact that she was considered to be an 'exceptional pupil' by the Identification, Placement and Review Committee (IPRC). After about three years, the teachers and assistants formed the view that the mainstream education arrangement was not in her best interests and that indeed the education environment might harm her. The IPRC directed that the student be removed from the mainstream set-up and be placed in a special educational unit. The parents appealed this decision through various quasi-judicial and judicial tribunals up to the Supreme Court. Before the Supreme Court, the question was whether or not the decision to remove the child from the mainstream education set-up to an education set-up for children with special education needs violated her right to equality guaranteed under section 15 of the Canadian Charter of Human Rights and Freedoms.

The court ruled that the placement of the child in a setting for learners with special education needs was in the best interests of the child and could not be viewed as discriminatory as it fostered the development of the child. In the opinion of Justice Sopinka, introducing a learner with special educational needs into a mainstream education set-up without regard to

64 Article 24(3)(c).

65 Kamga (n 59 above) 31.

66 As above.

67 [1997] 1 SCR 241.

their capability to cope amounts to forcing ‘the individual to sink or swim within the mainstream environment’ and this may be detrimental to them.⁶⁸ Whereas the court in this case sanctioned the removal of the pupil from a mainstream setting to a setting for pupils with special needs, it will be incorrect to argue that the court supported the philosophy that learners with disabilities should learn in a separate environment. What appears to have been decisive for the decision of the court in this case were the peculiar circumstances of the case and not the theories behind inclusive schools *vis-à-vis* segregated schools for children with disabilities. In other words, the court assessed the suitability of the education settings in issue and concluded on the basis of evidence placed before it that in that particular case, and that case alone, the interests of the pupil would be best served by removing her from the mainstream education system and placing her in a setting for learners with special education needs. This means that if the mainstream education system makes sufficient accommodation for learners with special needs, then it is wholly appropriate for learners with disabilities to be admitted in the mainstream education system. Thus, the *Eaton* case must be understood within its specific context and setting, regard being had to the facts and evidence presented before the court. It must not be understood as laying a principle of general application that learners with disabilities cannot be accommodated in a regular classroom.⁶⁹

The other case that has been erroneously relied upon in literature as supporting the proposition that children with disabilities must be separated from non-disabled learners in the mainstream education system is that of *O’Donoghue v Minister for Health*.⁷⁰ In this case a pupil had contracted Reyes Syndrome, a serious viral infection, at eight months old, suffering brain damage as a result. He consequently acquired severe mental and physical disabilities. On account of his disabilities, the child was denied a full time admission to state funded pre-school facilities. However, following sporadic training to improve his motor skills, responses, and recognition the child’s condition improved to mild disabilities. Following the refusal of school authorities to admit her son in the regular school, the child’s mother sued for the admission of her son into a regular primary school. The court awarded her the relief as there was evidence that children suffering from mild or moderate disabilities received full-time education in mainstream schools. The court also stated the following, albeit, *obiter dictum*:

In the case of the child who is deaf, dumb, blind, or otherwise physically or mentally handicapped, a completely different programme of education has to be adopted and a completely different rate of progress has to be taken for

68 Para 67 of the judgment.

69 See paras 73, 74 and 75 respectively.

70 [1993] IEHC 2; [1996] 2 IR 20 (27 May 1993).

granted, than would be regarded as appropriate for a child suffering from no such handicap.⁷¹

Although the above sentiments may be correct, the overriding consideration in each case is the doctrine of the best interests of the minor child. More narrowly, the inquiry within the context of access to education by learners with special needs is whether or not the mainstream set-up, which is the ideal system, is adequately adjusted to accommodate the needs of learners with disabilities to maximise their academic and social development. In other words, what is required is an all-inclusive assessment of the needs of the learner taken together with the extent of the inclusivity and individualised support of the concerned school. In other words, the procedure is not automatic that a child with a disability is necessarily excluded from a regular classroom. The sentiments expressed here show that inclusive education is distinctly a model of choice. It has been noted that although the multi-track system could be useful in separating learners according to their abilities, the classification 'wastes valuable special education resources in determining which category a child fits into rather than providing the instructional interventions the child requires'.⁷² In this connection, the World Bank has stated that:

Most children with special education needs can be successfully and less expensively accommodated in integrated schools than in segregated institutional settings; and ... the vast majority of children with special education needs can be cost-effectively accommodated in regular primary schools.⁷³

It has been correctly observed that excluding children with disabilities from mainstream education disenfranchises them by placing emphasis or focus on their impairments rather than the environmental constraints such as lack of physical access, adequate equipment and the availability of special educators.⁷⁴ In the *Sofia*⁷⁵ case, the European Court of Human Rights reasoned that if the right to equal education opportunity means anything, it is that children with disabilities must be afforded equal education for all children with reference to their disabilities and that schools must create enabling environments for effective learning by children with disabilities. The court stated that the failure to create an enabling environment for children with disabilities constitutes a violation of the right to equal education opportunity. In *Mental Disability Advocacy Center v Bulgaria*,⁷⁶ the European Committee of Social Rights ruled that Bulgaria violated the right to education of children with intellectual disabilities by excluding them

71 *O'Donoghue* para 25.

72 SJ Peters 'Inclusive education: Achieving education for all by including those with disabilities and special needs' paper prepared for the Disability Group, the World Bank quoted in Kamga (note 59 above) 32.

73 Quoted in Kamga (n 59 above) 33.

74 S Stubbs *Inclusive education: Where there are few resources* (2002) 23.

75 Case No 13789/06, decision of 18 May 2007.

76 Complaint No 41/2007, decision delivered on 3 June 2008.

from the mainstream education system. In the South African case of *Western Cape Forum for intellectual Disability v Government of the Republic of South Africa*⁷⁷ the Western Cape High Court implored the government of South Africa to take concrete and targeted measures to ensure that children with profound mental disabilities access education. For his part, the UN Special Rapporteur for Disability has stated that:

States parties [to the CRPD] must ensure an inclusive education system at all levels and life-long learning. Learners with disabilities therefore have a right not to be excluded from the general education system on the basis of disability and to reasonable accommodation for the individual learner's needs. This not only means that learners have a right to attend mainstream schools and not be relegated to segregated schools, it also means that the special education needs of persons with disabilities must be taken into account in the general education system. This goes beyond grouping all learners together in one classroom to ensuring the provision of effective individualised support that maximises academic and social development.⁷⁸

The Education for All (EFA 2000)⁷⁹ also affirms the idea of providing quality education for all children in an inclusive setting. From the above analysis, it is clear that international law acknowledges and guarantees the right to education for children with disabilities, and to the extent practicable to receive their education within the regular education system. Most importantly, international law requires that children with disabilities must be provided with education on an equal footing with non-disabled children. In this connection, international law requires that necessary assistance be made available to children with disabilities so that they can harness their extraordinary potential to learn and secure better futures for themselves. In a sense, there is absolute need for the rethinking of education set-ups to embrace learners that are disadvantaged by reason of disability. Hence, this necessitates a paradigm shift in the education setting from exclusion to inclusion: and this shift is overdue, hence it must be rapid.

Despite the imperatives of international law in guaranteeing the right to inclusive education, Botswana's attitude to the protection of this right has been tepid. This is demonstrated by the fact that no mention or reference is ever made of the right to inclusive education in the states parties' reports submitted by Botswana to the CRC Committee, the monitoring body for the implementation of CRC provisions.⁸⁰ Botswana

77 2011 (5) SA 87 (WCC).

78 Report of the United Nations High Commissioner for Human Rights on progress in the implementation of the recommendations contained in the study on the human rights of persons with disabilities [A/HRC/4/75], para 36.

79 Education for All is a global movement led by UNESCO aiming to meet the learning needs of all children, youth and adults by 2015.

80 Botswana's initial states parties' report on the implementation of the CRC, which was submitted in 2001, was discussed by the Committee on the Rights of the Child on 16 September 2004. It is lagging behind in relation to the second and third combined CRC reports. These reports were due in 2007 and have not been submitted yet.

is yet to submit the initial and second reports to the African Children's Rights Committee, the monitoring organ of the ACRWC. It is also disappointing that the CRC Committee has not raised the question of the implementation of the right to inclusive education *mero motu* with Botswana in 2004 when the country submitted its first and only report. The failure by Botswana to submit these reports to these treating monitoring bodies deprives it the opportunity to receive feed-back on its efforts geared towards the implementation of children's rights guaranteed under these instruments.⁸¹

6 The right to inclusion in Botswana: Praxis, law and policy analysis

6.1 Truncated background information

According to Dart, in traditional Tswana societies, children from villages were educated by age group under a system called *bogwale* for males and *lokwapa* for females.⁸² He however notes that there are no records that show how children with disabilities were integrated into this form of education system. More significantly, Dart opines that many children with disabilities, who are unable to cope with a modern western education system which is too formal, would probably have coped better with the traditional education system because it was mainly oral and placed emphasis on practical life skills and knowledge.⁸³ Missionaries and colonial authorities discouraged this system of education in favour of the imposed western conception of education. Chiefs also outlawed it as they turned to Christian practices.⁸⁴ According to available records and literature, in Botswana, the provision of education to learners with special needs started about forty years ago.⁸⁵ Missionaries from the Dutch Reformed Church established a school for the blind or the severely visually impaired in Botswana in 1969 and missionaries from the Lutheran Church established a school for the deaf or those with severe hearing problems in the country in 1970.⁸⁶

81 Dinokopila has described Botswana's record in submitting states reports before various treaty monitoring bodies as 'unimpressive' see BR Dinokopila 'Bringing the Paris Principles home: Towards the establishment of a National Human Rights Commission in Botswana' (2012) 13 *University of Botswana Law Journal* 60.

82 Dart (n 2 above) 57.

83 Above.

84 G Mautle 'Formal education among the peoples of Botswana before 1840' (2001) 9 *Mosenodi; Journal of The Botswana Educational Research Association* 25.

85 S Mukhopadhyay et al 'Inclusive education for learners with disabilities in Botswana primary schools' (2012) *Sage Open* 1, available at <http://sgo.sagepub.com/content/2/2/2158244012451584> (accessed 9 May 2014).

86 As above.

In 1977 the government of Botswana adopted its first education policy commonly known as *Education for Kgahisano* which recommended that each Motswana child must enjoy his or her right to education without reference to their disability, race, ethnicity, culture or background.⁸⁷ The policy experienced implementation problems and in 1992 the government set up the Second National Commission on Education to review the country's education system with a view of addressing its shortcomings.⁸⁸ The Commission submitted its report to government in 1993. Against the background of this report, the country's Revised National Policy on Education (RNPE)⁸⁹ was formulated and adopted by the National Assembly as Government Paper 2 of 1994. This policy contains a number of disparate aspects of special education. We will return to this policy shortly for further reflections on it. As part of its efforts to implement inclusive education, in 1984 the Government of Botswana established a Special Education Unit under the Ministry of Education, Skills and Development, now called the Special Education Division, which is tasked with all administrative works relating to learners with disabilities.

It is apposite at this juncture to indicate that Botswana has a population of about two million. The Government of Botswana Central Statistics Office estimates in its *Welfare Core Indicators Survey* that of the two million, about 4,4 per cent aged six and above live with some form of disability which increased with age.⁹⁰ Blindness and inability to use legs account for the greater bulk of disability, constituting 46 percent and 22 percent, respectively.⁹¹ The Survey is however silent on the government's strategies to address disability concerns save to note that 'disability still remains a challenge' in the country.⁹² It should be acknowledged that for inclusive education to be a success, comprehensive legal and policy frameworks must be drawn out and effectively implemented by trained professionals who also have the benefit of adequate resources at their disposal. More importantly, at the risk of repetition, the right to education must be made justiciable.

6.2 The legal framework

The Constitution of Botswana⁹³ does not contain socio-economic rights in its Bill of Rights. It only promises a few civil and political rights. Thus, the right to education, as with all socio-economic rights, is not constitutionally guaranteed in Botswana, let alone the right of children with disabilities to

87 As above.

88 As above.

89 Government Paper 2 of 1994, approved by the National Assembly on 07 March 1994.

90 See the Botswana Welfare Core Indicators Survey (July 2013) 10. Available at http://www.cso.gov.bw/index.php?option=com_releases&id=267 (accessed 4 September 2013).

91 As above.

92 Botswana Welfare Core Indicators Survey (n 90 above) 12.

93 Cap. 01:01, Laws of Botswana.

receive education that meets their needs. Like the Constitution, the Botswana Education Act⁹⁴ is also silent on the right to education.⁹⁵ In contrast, the Constitution of Kenya⁹⁶ affirms the right of all children, without distinction on any grounds such as disability, to free and compulsory basic education.⁹⁷ Further, it clearly recognises the right of persons with disabilities 'to access educational institutions and facilities'.⁹⁸ Despite that the Constitution and the Education Act of Botswana are silent on special needs for learners with disabilities, by adopting the Jomtien Declaration (UNESCO, 1990) above, the Government recognised and affirmed that education is fundamental to all children, and it is a basic human right. To this end, it is imperative that it be made accessible to all children, including those with disabilities.⁹⁹ In addition, in signing the Dakar Framework for Action¹⁰⁰ the government committed itself to achieving education 'for every citizen in every society and ... especially for the most vulnerable and disadvantaged children'.¹⁰¹

Locally, section 18(1) of the Botswana Children's Act states that: '[e]very child has a right to free basic education'. It is submitted that the government is under an obligation to provide such free basic education. Although socio-economic rights are generally non-justiciable in Botswana on account of their exclusion from the Bill of Rights of the Constitution, it is submitted that in Botswana the right to education is justiciable within the strictures of the aforesaid section 18(1) of the Children's Act. The operative part of that provision for purposes of justiciability is the phrase, 'free basic education'. This simply means that the state has a duty to provide this basic education to children and provide it for free. In other words, the state is prohibited from levying parents for academic costs of their children. Section 18(2) thereof bolsters the sacrosanctity of the child's right to basic education by making it a punishable offence for any parent, other relative or guardian to deny the child to go to school without justifiable excuse. Commenting on materially similar provisions of the Nigerian Child's Rights Act of 2003, Akinbola correctly asserted that:

[T]he right to education was raised from a non-justiciable entitlement to a new legal imperative. The Child's Rights Act [has] brought into Nigerian socioeconomic rights jurisprudence a new dispensation which equates the right to education in the country with international standards. This recognition thus paved the way for the recognition of children (both able and

94 Cap. 58:01, Laws of Botswana.

95 Contrast with section 5(1) of the South African Schools Act 84 of 1996, which provides in this connection that 'a public school *must* admit learners and serve their educational requirements without unfairly discriminating in any way' (my emphasis).

96 Kenya's new Constitution was adopted on 4 August and promulgated on 27 August 2010.

97 See art 53 thereof read in tandem with art 27.

98 Art 54 thereof.

99 See Dart (n 2 above) 58.

100 Adopted in Dakar Senegal in 2000.

101 See clause 7(iii) thereof.

disabled), as bearers of a right which may be enforced against parents, other individuals ...¹⁰²

The above sentiments apply with equal force and measure to Botswana's situation. In terms of section 52 of the Botswana Children's Act, the parent, care-giver, relative or guardian of a child with disability is required to extend to such a child 'special assistance or care' to ensure his or her dignity,¹⁰³ self-esteem, self-reliance,¹⁰⁴ and to 'enable [him or her] to actively participate in social, cultural, religious and educational activities subject to the child's mental and physical capabilities'.¹⁰⁵ At a comparative level, the Kenyan equivalent statute guarantees the right to inclusive education expressly. In terms of section 5 of the Kenyan Children's Act,¹⁰⁶ no child shall be discriminated on the basis of his or her disability. The Act also recognises the right of all children, including those with disabilities to free, compulsory and basic education in accord with article 28 of the CRC.¹⁰⁷

As indicated above, in the Botswana scheme of laws, only section 18(1) of the Children's Act touches on children's right to education. The laws of Botswana are generally silent on the needs and challenges faced by children with disabilities in the school environment. This constitutes a legislative anomaly when regard is being had to the developing trends at the international scene which are geared at protecting the rights of children with disabilities especially in relation to education. Despite the legislative lacunae in Botswana in this regard, a stop-gap measure has been adopted by way of policies.

6.3 The policy framework

As stated above, Botswana has adopted a number of policies that concern some aspects of the special needs of learners with disabilities. These include: the RNPE, National Development Plan 9 (NDP 9),¹⁰⁸ the Inclusive Education Policy (IEP), the Early Childhood Care and Education Policy (the ECCEP)¹⁰⁹ and a few others. Chief amongst these is the RNPE. This policy recommends to the government to ensure that all learners in the country including those with special needs have equal education opportunities.¹¹⁰ More relevantly, it recommends to the government to prepare children with special educational needs for

102 BR Akinbola 'The right to inclusive education in Nigeria: Meeting the needs and challenges of children with disabilities' (2010) 10 *African Human Rights Law Journal* 47.

103 Sec 52(a)

104 Sec 52(b).

105 Sec 52(c).

106 8 of 2001.

107 Sec 7(2) thereof.

108 Adopted in 2003.

109 Prepared by the Ministry of Education in 2001.

110 Recommendation 88(a).

integration as far as possible with their peers in ordinary schools.¹¹¹ The Policy also recommends that the government should ensure ‘a comprehensive assessment that is based on the child’s learning needs, and not on group norms, and which is followed by individualised instruction’.¹¹² The policy also urges the government ‘to promote the early identification and intervention which will ensure the maximum success of the rehabilitation process’, and to ‘ensure the support and active participation of the children’s parents and community through an education and information campaign’.¹¹³

In addition, the policy recommends that each school should have a Senior Teacher responsible for the special needs of learners with disabilities. The Senior Teacher is also tasked with the coordination of a school intervention team in cases of learner disability. It is also required that teachers should have elements relating to special needs education as part of their pre-service or in-service training.¹¹⁴ However, the RNPE has been trenchantly criticised for failing to address the question of access to the general curriculum for learners with disabilities.¹¹⁵ It is also criticised for not making the education needs of children with disabilities a priority despite their naturally precarious circumstances.¹¹⁶ In this connection, Mthombeni and Fidzani have observed that the policy does not seek to address the problem of inaccessibility of school buildings to learners with disabilities.¹¹⁷ Moreover, it is silent on strategies that the government seeks to employ in addressing under-representation of learners with disabilities in accessing the general curriculum.¹¹⁸ A number of key objectives relating to special education are also contained in the country’s NDP 9.¹¹⁹ Although NDP 9 basically rehashes what is contained in the RNPE, notably, it shifts the language from *integrated education* in RNPE to *special education* in NDP 9.¹²⁰ The ECCEP also requires that the special needs of learners with disabilities be taken into account in education set-ups. It states that any centre that admits learners with special needs must liaise with the Division of Special Education within the Ministry of Education, Skills and Development for guidance and support. This policy also

111 Recommendation 88(b).

112 Recommendation 88(c).

113 As above.

114 Recommendation 95.

115 E Moswela ‘A critical analysis of pedagogical styles and access to the general curriculum for deaf students’ MA thesis, University of Botswana, 2011 6.

116 As above.

117 F Mthombeni & L Fidzani ‘Inclusive education and accessibility of junior secondary school buildings in Botswana’ in T Maundeni & M Nnyepi (eds) *Thari ya bana: Reflections on children in Botswana 2011* (2011) 37 38.

118 As above.

119 Adopted in 2003.

120 The distinction between these two concepts has been dealt with above.

requires education centres to make provision for learners with disabilities to access school buildings.¹²¹

In September 2011, the Botswana Ministry of Education and Skills Development adopted the IEP which sets Botswana's goal in this regard as achieving: 'an inclusive education system which provides children [and] young people ... with access to relevant and high quality education which enables them to learn effectively, whatever their ... life circumstances, health, disability, stage of development, capacity to learn or socio-economic circumstances'.¹²² Amongst the goals of this Policy is to ensure that teachers are equipped with the necessary skills and resources to enable children of different abilities to learn effectively.¹²³ The Policy also implores all relevant governmental departments and private entities to work in harmony to develop and maintain an inclusive education system in the country.¹²⁴ In achieving this end, the policy states that the government has committed itself to improving schools' access to good quality teaching aides and learning resources appropriate to the specific needs of children with disabilities.¹²⁵ Significantly, the government of Botswana has undertaken to harmonise relevant planning, policy-making, development and delivery of services so that it can deliver an inclusive education service that meets national requirements and is in line with international best practices.¹²⁶ Despite that the IEP has been in existence for four years, little has been done to implement it. Despite the existence of these policies that emphasise the need for inclusive education in the country, the theory of these policies has hardly been met by their practice. Another problem with Botswana's education policies is that they are disparate and disjunctive. What is required is a unitary and compact special education needs scheme found in a single document. This will promote cohesion and easier implementation.

6.4 Reflections on the praxis

According to a report commissioned by the government of Botswana in 2008,¹²⁷ 10-15 per centum of school going age children are not in schools, the majority of whom are children with disabilities, those with learning difficulties, street children and remote area dwellers.¹²⁸ In relation to the latter, for a long time Botswana has been trying to ensure that children in

121 See clause 22.1 of the Policy. The National Policy on Vocational Education and Training (Ministry of Labour and Home Affairs 1997) also calls for particular priority to be afforded to, amongst others, learners with disabilities, and further requires special training programmes to be put in place for the benefit of these learners.

122 IEP, goal 1.

123 IEP, goal 2.

124 IEP, goal 5.

125 Commitment statement 6.

126 Commitment statement 10.

127 Draft National Report on the Development of Education (n 63 above) 30.

128 As above.

remote areas access education. In some cases, the government has taken such children to boarding schools. It has been observed that this arrangement leads to cultural isolation as the children are being uprooted from their culture and communities.¹²⁹ Thus, many school aged children with disabilities and those from remote areas are not receiving education at acceptable levels. One other problem of Botswana's education system is that, in some instances, it is structurally exclusive by nature of its design. For instance, it has been said that the curricular designs at both primary and secondary school levels are favourable to the needs of 'average' learners. Thus, this curricular design has the potential to exclude from the curricula fast and slow learners. But most critically, it has been said that this design has excluded from its scope all learners with special needs. In an empirical study for the adaptation and modification of the basic and senior secondary curriculum for hearing impaired learners, Kisanji has observed that barriers to curricular access in the Botswana education system can be classified into nine broad areas, namely:

[D]elayed language development; quality of teachers; and through them the quality of teaching; the absence of a developed and legitimate sign language for Botswana and manual codes for Setswana to support deaf children learning it; congested curricula in terms of subjects and content; support materials that are unsuitable and unavailable; inappropriate assessment instruments and examinations; shortage of qualified teachers; poor home school links and collaboration; and weak collaboration between and within [the Ministry of Education, Skills and Development] structures.¹³⁰

The study also contains very comprehensive recommendations with specific regard to curriculum development for students with disabilities and their teachers. Unfortunately, effort on the part of the government to implement these recommendations has been half-measured. In another study concerning itself with the situation of learners with mental retardation in public schools in Botswana, Casey concluded that this category of learners is excluded from the curricular on account of one or more of the following reasons: identification of these children is done too late; there is little or no development or modification of the curriculum to suit their needs; some children were placed in the wrong settings; teaching lacked focus and was often poorly planned; there was an absence of individual planning; many children overstay in a primary school setting until adulthood only to later 'graduate' to their homes without progressing to the next tier of education; inadequate suitably qualified teachers; teachers have to cope with poor supply of basic resources by the government; no creative linkages between the schools and the wider community; and there is no quality procedure and effective oversight

¹²⁹ As above.

¹³⁰ J Kisanji 'Situational analysis for the adaptation and modification of the basic and senior secondary school curriculum Report' (2003) 17.

structures for implementation of special education strategies.¹³¹ The situation for learners with disabilities in vocational schools is no different, Dart has observed that despite that at policy level, the government expresses commitment on its part to facilitate greater access to education and training opportunities for learners with disabilities, very few people actually enjoy this opportunity. The author observed that this was due to, inter alia: 'lack of access to school, or lack of access to the curriculum and qualifications if at school, few training places (even for the general population), poor training in the existing rehabilitation training centers, and underfunded NGO's providing training for this group of students'.¹³²

Unsurprisingly, the findings and recommendations in the studies referenced are also reflected in the earlier seminal work of Procek et al on *Access to vocational educational training for students with disabilities* written in 1994.¹³³ This study is extensive in terms of depth and analytical detail and covers many aspects of special education than its title suggests. Although it was written about two decades ago, it is still as relevant today as it was then, both in terms of analysis and recommendations, as the majority of the problems it identified have not been addressed to this day. According to a study undertaken by Pilime on integration and inclusion in Junior Secondary Schools in Botswana, many schools in the country 'do not have a clear policy on integration and special education needs. Provision is limited ... and given the range of responses on questions pertaining to curriculum it indicates that a further investigation is needed'.¹³⁴ Thus, most learners cannot learn or progress through a curricula that is ill-suited to them. To address this problem, the Curriculum Development Division in the Ministry of Education, Skills and Development intends to adopt the ULD method which offers a menu of differentiated learning activities that accommodate learners of different abilities.¹³⁵ However, as indicated above, this approach is yet to be implemented in the country.

The design of the curricula is gradually being made spiral to allow for constant revision and gradual development of concepts to cater for learners with disabilities. This approach is also suitable for multi-standard classes in remote and mobile communities on account of its ease of variability and re-arrangement of content. Further, in Botswana instructional materials are largely constructed for the average learner. Their design is made to fit the cognitive grade levels to be delivered by the teacher to the learner.¹³⁶ This was found to be often exclusive of learners who fall outside the

131 E Casey 'A study on access to vocational education and training for students with severe disabilities in Botswana' (2008) 36.

132 Dart (n 2 above) 16.

133 E Procek et al 'Study on access to vocational education and training for students with disabilities' (1994) 37.

134 S Pilime 'Integration or inclusion:; The case study of community junior secondary schools in Botswana' unpublished Masters thesis, University of Leeds, 2003 67.

135 As above.

136 Pilime (n 134 above) 37.

designated parameters of an average learner. To address this problem, the Ministry of Education Skills and Development has recommended books that are strong in learner material interaction and high syllabus coverage.¹³⁷ To that end, the Ministry also encourages competition amongst publishers so as to have a wide constellation of materials for selection for use in the syllabi. The Ministry of Education sometimes provides materials to schools that have children with special needs. The Ministry has also collaborated with the Central Resource Centre for the Special Education in the development of training equipment for special needs. The training equipment developed thus far includes: balance training apparatuses; shoe templates-practice lacing; wooden mountains/stairs-climbing exercise and training; different circles/loops movement and sewing pads for sewing, amongst others.¹³⁸ Schools with visually impaired students are supplied with items such as the styluses, reading stands or boxes and brail lent boxes which they use for teaching and learning. The government also supplies assistive devices to foster access to the school curriculum. However, Hopkins has noted that despite government efforts in this regard, its budgetary allocation for delivery of special education in the country is too ever-tightening.¹³⁹ This may create an unfortunate impression that educational needs of children with disabilities are not a priority for the country. Given that special needs education in the country is still at its rudimentary stages, the government must increase, rather than reduce spending in this area so that it develops to acceptable levels.

Another factor which tends to make the curriculum exclusive is the question of subject packaging. The subjects, especially in primary schools, tend to be inclined towards 'academic subjects'.¹⁴⁰ This manner of packaging of subjects allows for lesser opportunity for learners that are academically talented to excel. However, since 2002 the government of Botswana has endeavoured to review syllabi for primary schools by introducing practical oriented subjects in the form of Creative and Performing Arts (CAPA).¹⁴¹ This is meant to foster learners who are not academically talented to excel. At junior and senior secondary school levels, the curriculum has been made flexible by allowing a broad choice of subjects, which include practical oriented courses to enhance excellence by students who are academically gifted. There has also been a problem of access to school facilities by learners with disabilities in the country. Failure to adapt and modify school buildings has excluded many children with disabilities from the mainstream school system. The majority of the schools in the country were not built with children with disabilities in

137 As above.

138 As above.

139 A Hopkins 'Special education in Botswana: A comparative critique', paper presented at the 'Special education consultative stakeholders' seminar' relied upon by Dart (n 2 above) 62.

140 Hopkins (n 139 above) 34.

141 As above.

mind. Thus, this group of children find it difficult to access them. It is thus imperative to modify some existing school buildings by installing ramps in order to facilitate access for learners having disabilities. It is also imperative that the government must modify standard of construction of all educational set-ups to make them easily accessible to learners with disabilities.

A phenomenological research conducted by Abosi et al in 2012 focusing on the experiences of teachers in implementing inclusive education shows that many of the problems besetting the implementation of special education discussed above have not been resolved.¹⁴² For instance, the authors indicate that lack of 'trained special educators' is a 'pervasive barrier' that continues to undermine efforts to include learners with disabilities in regular school classrooms in Botswana.¹⁴³ They also echo the sentiments expressed by Hopkins that lack of funding has also undercut efforts aimed at inclusion.¹⁴⁴ Some of the barriers identified by the study are: lack of parental involvement; inordinately large classes and absence of support mechanisms for implementation. In relation to the latter, the Division of Special Education of the Ministry of Education, Skills and Development is charged with supporting the implementation of inclusive education in schools. However, it must be noted that the Ministry has not satisfactorily supported teachers. It has not provided schools with necessary and appropriate instructional resource materials such as books, infrastructure, computers, television sets, amongst others. Further, there have been no workshops or other platforms for exchange of ideas and experiences by teachers. This is discrepant with the RNPE imperative that calls for regular in-service training for practicing teachers.

Further, none of the schools covered by the study had inclusive education as part of their development plans. In fact, what the authors observed in relation to special education were attempts to convene workshops to share ideas, knowledge and experiences about the implementation of special education. However, these attempts were frustrated by a lack of funding and a shortage of resource personnel to mount workshops. The authors also concluded that there was inadequate infrastructure and resources to implement inclusive education. In particular they noted that there is acute shortage of classrooms to cater for the increasing number of learners with disabilities. They noted that in one school, students with impaired hearing were attending outdoor classes next to a noisy, heavily trafficked area. The authors also observed that

142 Mukhopadhyay et al (n 85 above).

143 This point has also been made by Mukhopadhyay, as early as 2013, who concludes in his situational study about the implementation of special education in Botswana that '[t]hroughout the interviews, the teachers' lack of knowledge and skills appeared to be the dominant theme', see S Mukhopadhyay 'Voices of experience: Botswana primary school teachers on inclusive education' (2013) 5 *European Journal of Educational Studies* 73-77.

144 As above.

although some buildings were structurally modified with ramps, these ramps were too steep and not user-friendly. The study also found that necessary facilities like toilets were inaccessible.¹⁴⁵ The authors described the inclusive education situation in the country as 'appalling'. For successful implementation of inclusive education to occur it is necessary that there should be administrative support from the government and other stakeholders. In addition, there must be adequate materials and personnel resources.

7 General observations

Despite the fact that the government has shown concern to the plight of learners with disabilities in Botswana, at least at policy level, it has not done enough to address their problems. In other words, there is a gap between recommended practice and the reality of implementation of inclusive education on the ground.¹⁴⁶ As shown above, children with disabilities are still excluded from accessing education in Botswana. These are children who are missing out on the opportunity to learn, be better and self-supporting citizens who would not dwell on government hand-outs for survival. In explaining the value of education, Addison trenchantly observes that:

Education is a companion which no misfortune can depress, no crime can destroy, no enemy can alienate, no despotism can enslave. At home [it] a friend, abroad an introduction, in solitude a solace and in society an ornament. It chastens vice, it guides virtues, [and] it gives at once, grace and government to genius. Without it, what is man? A splendid slave, reasoning savage.¹⁴⁷

In this connection, former South African President Nelson Mandela opined that 'education is the most important weapon which [one] can use to change the world'.¹⁴⁸ Education gives more than just a qualification. Education is as empowering as it is a fulfilling right.¹⁴⁹ An enjoyment of other rights such as the right to information, the right to vote, the right to work, and at times the right to contest for a public office depend on it.¹⁵⁰ It also engenders respect for the dignity and equality of persons. Children with disability, whose rights to dignity and equality are under constant assault, can use education as a shield for protection against such abuses.

145 As above.

146 As above.

147 J Addison, as quoted by Akinbola (n 102 above) 19.

148 See speech delivered by South African former President Nelson at the occasion of the launch of Mindset Network at the University of Witwatersrand, Johannesburg, South Africa on 16 July 2003. The speech is available at http://db.nelsonmandela.org/speeches/pub_view.asp?pg=item&ItemID=NMS909&txtstr=lighting%20your (accessed 25 April 2013).

149 B Bekink & M Bekink 'Children with disabilities and the right to education: A call for action' (2005) 16 *Stellenbosch Law Review* 125.

150 Akinbola (n 102 above) 93.

Education also enables an individual to make critical assessments about life and make rational choices in relation thereto. It has been opined that the provision of education is one of the singularly important functions of latter-day governments.¹⁵¹ Education nurtures a being so that he can grow intellectually and contribute back to the society which helped him or her grow. It is an unqualified and composite right demanding prioritisation for realising, especially for children with disabilities.¹⁵² Weighing in, Professor Devenish states that:

Education is of seminal importance as far as human rights are concerned, since it liberates people from the bondage of ignorance, superstition and fear. It gives to them dignity and self-confidence and is a basic right, on which the materialisation of many other rights depends.¹⁵³

The state of Botswana's education system fails to take into account the pluralistic nature of its society especially the fact that there are people who cannot naturally fit into the so-called normal school system and that there are those whose engagement in education needs special dispensations because of the nature of their physical emotional and intellectual being. Excluding children with disabilities from the mainstream education system blots Botswana's claim that it is a shining example of democracy in Africa and the world. The history and experience of democracy is indeed that of mounting inclusion. In this connection, the Committee on the Rights of the Child has opined that, 'inclusion of the child with disability in the groups of children of the classroom can show the child that he or she has a recognized identity and belongs to the community of learners, peers, and citizens'.¹⁵⁴ Furthermore, the Committee notes that, 'it is important to understand that inclusion should not be understood nor practiced as simply integrating children with disabilities into the regular system regardless of their challenges and needs'.¹⁵⁵ Beyond integration, there must be accommodation of the needs of these children. As pointed out above, the Botswana education system makes very minimal provision for children with disabilities. This is mainly on account of the fact that there is no comprehensive special education curriculum in place in regular schools.

As a response to the unavailability of measures to cater for learners with disabilities, parents with long purses have resorted to paying fees to NGOs that provide education for children with disabilities. Naturally, this means that the future of similarly circumstanced children born to poor parents is bleak as these children will go without education for the reason

151 *Brown v Board of Education of Topeka* 347 US 438 (1954).

152 RJR Levesque 'Geraldine van Bueren: The international law on the rights of the child' (1995) 19 *Fordham International Law Journal* 832.

153 GE Devenish 'Aspects of the right to education in the Constitution' (1998) 2 *De Jure* 224.

154 General Comment No 9 (n 52 above) para 64.

155 As above.

that their parents are unable to meet their education costs. However, it must be noted that in recent years, the government has undertaken to educate children with special education needs by paying school fees for them to NGOs. The government's program in this regard is shoddily coordinated and not sufficiently broad-based to include children staying in the remotest areas of the country, and accordingly its results are very minimal. However, and more significantly, this program undermines the idea of inclusive education because it perpetuates and cements exclusion by encouraging a parallel education system for children with disabilities. In this regard, Hopkin has argued that the operational practices of the government of Botswana effect exclusion.¹⁵⁶

To this end, it can be argued that Botswana's operational approaches undermine one of the pillars of the country's national vision,¹⁵⁷ namely that Botswana must be 'an educated and informed nation' by 2016. To this end, all hurdles that bear the potential to frustrate the objectives of the national vision must be removed. It is submitted that the concept of inclusive education is the most effective strategy for the attainment of education for all citizens. The absence of a comprehensively arranged inclusive education system in Botswana undermines the attainment of this ideal. This means that the country is losing the potential of some of its intellectually talented citizens who are excluded from receiving education solely on ground of disability. According to a study commissioned by McBride in 2010, of the 100 children who reach school age, about 86 start school and 69 complete their primary education.¹⁵⁸ This report approximates that the country is losing about a quarter of its future productive citizens.¹⁵⁹ Numerous learners who attend school are not learning and those who learn are not learning optimally as they would have otherwise done in a more flexible system that accommodates children with disabilities.

8 Conclusion

It is clear that over the past two decades the paradigm of disability has shifted from being a medical issue to being a human rights question. The re-conceptualisation of disability as a human rights issue places the principles of inherent human dignity, non-discrimination and equality at the centre of any operational approach to the needs of persons with a disability. Inclusive education is a human rights-oriented strategy intended to integrate children with disabilities into the education mainstream and by

156 AG Hopkin 'Special Education in Botswana: Social inclusion or exclusion?' (2004) 18 *Botswana Journal of African Studies* 89.

157 See Botswana National Vision, Presidential Task Force (1997) 5.

158 R McBride 'Education and training policy support programme: Inclusive education policy in Botswana' Draft Report, unpublished manuscript submitted to Ministry of Education and Skills Development (2010).

159 As above.

extension into society.¹⁶⁰ Inclusive education is about acknowledging and respecting differences in abilities and creating an enabling environment to enable all children without references to their impairments. This education approach also enables learners with disabilities to establish and pursue their own concept of self-worth and respectable personhood to realise their academic and social welfare. To facilitate effective learning in relation to learners with disabilities, serious adjustments must be made to the curricula. In addition, learning methods and practices must be adjusted to suit their needs. In this regard, the Committee on Socio-Economic Rights has noted that:

Modification in training programmes for teachers and other personnel involved in the educational system must be achieved in order to fully implement the philosophy of inclusive education.¹⁶¹

As demonstrated above, Botswana's education laws are silent on the right to inclusive education on the part of children with disabilities despite the fact that the discourse of rights of children with disabilities is receiving exponential focus on the international plane. The situation in Botswana is inconsistent with international law which requires that national legislation, administrative rules and procedures, and practices be in conformity with the imperatives of international law.¹⁶² Rather than committing to legally binding obligations in an effort to protect and promote rights of PWDs, Botswana has elected to come-up with disparate policies dealing with disability rights thus creating a false impression of commitment to protect rights of persons with disabilities as policies by nature not binding. The fact that there is no legislation specifically dealing with rights of PWDs in Botswana is at best a case of legislative misnomer and at worst that of legislative neglect.

The absence of a tailored piece of legislation that specifically addresses the educational needs of children with disabilities in the country sends a sullen message that human rights of children with disabilities do not matter. More critically, the absence of a comprehensive legal protection system for children with disabilities in general and those with special education needs in particular has worked to undermine the potential of children with disabilities to harness their education potentials and attain a future they desire for themselves. Legalisation has been considered to be one way of giving substance to a policy objective.¹⁶³ As pointed out above, what is in place in Botswana as a protection measure is a series of

160 T Boezaart 'A constitutional perspective on the rights of children with disabilities in an educational context' (2012) 12 *South African Public Law* 471.

161 See General Comment No 9 (n 52 above) para 64.

162 General Comment No 1 'The Aims of Education' 2001/04/17 CRC/GC/2001/1 (2001), para 10. Available at [http://www.unhchr.ch/tbs/doc.nsf/\(symbol\)/CRC.GC.2001.1.En?OpenDocument](http://www.unhchr.ch/tbs/doc.nsf/(symbol)/CRC.GC.2001.1.En?OpenDocument) (accessed 23 April 2013).

163 D Neal & D I Kirp 'The allure of legalization reconsidered: The case of special education' (1985) 48 *Law and Contemporary Problems* 63 65.

incoherent policies without a legal imperative, which officials can ignore without consequences of legal sanctions. Besides, the implementation of these policies remains woefully inadequate.¹⁶⁴ A curriculum for learners with disabilities, especially those with severe and profound intellectual disabilities is yet to be formulated. Classrooms with the necessary support system are yet to be put in place. Education policymakers must at all times bear in mind the following incontrovertible truth to guide their education planning and policy making:

The increasing challenge to schools when they want to make a difference and they want to be fit for the future, is to examine what they are offering their learners, how it is offered and whether it meets the needs of the learners and the public.¹⁶⁵

To this end, it is extremely important that the government of Botswana must join the international community in efforts to make inclusive education not only real but an attainable priority rather than a policy flourish. A starting point in this regard would be the enactment of laws that guarantee and facilitate the rights of learners with disabilities to inclusive education. Another critical point to note is that inclusive education is expensive. This means that the government will have to increase its budgetary allocation to the Ministry of Education and Skills Development to enable it to operationalise inclusive education facilities. Like all tenets of social justice, the ideal of inclusive education is aspirational. Its attainment would require that concrete, progressive and targeted measures towards its attainment be undertaken. It is submitted that the human rights model to disability, that has inclusive education as its concomitant feature, provides an appropriate framework for the government of Botswana to respond to the challenges and needs of learners with disabilities in the country. In this way, the dignity and self-concept of PWDs will be given practical meaning.

164 Moswela (n 115 above) 5.

165 T Charlton & K David 'Ensuring schools are fit for the future' in T Charlton & K David (eds) *Managing misbehaviour in schools* (1993) 3.