



**RWANDA'S INTERNATIONAL HUMAN RIGHTS OBLIGATIONS
REGARDING THE RIGHT TO EDUCATION FOR CHILDREN
WITH DISABILITIES**

**by
BAHATI Vedaste
Student number: 13225139**

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**Supervisor:
Dr. Magnus Killander**

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DECLARATION

I, *Vedaste Bahati*, hereby declare that this dissertation, which I submit for the Master of Laws (LLM) degree at the University of Pretoria, is my own work and has not previously been submitted by me for a degree at another University. Both primary and secondary sources used have been duly acknowledged.

Signature

Date

DEDICATION

To my beloved wife UWERA BINAMA Naomi for her endless support and love;

To my son NGENZI B. Schilo and my daughter NGANZO B. Chirley;

To the miserable Rwanda Children with disabilities who do not have access to Education.

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May God Almighty bless all of you.

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ACRONYMS AND ABBREVIATIONS

AID	: Acquired Immune Deficiency Syndrome
CRC	: Convention on the Rights of the Child
CRPD	: Convention on the Rights of Persons with Disabilities
EAC	: East African Community
ECD	: Early Childhood Development
EDPRS	: Economic Development and Poverty Reduction Strategy
EFA	: Education for All
GoR	: Government of Rwanda
HIV	: Human Immunodeficiency Virus
ICCPR	: International Covenant on Civil and Political Rights
ICESCR	: International Covenant on Economic, Social and Cultural Rights
LLM	: <i>Legum Magister</i>
MDGs	: Millennium Development Goals
MINECOFIN	: Ministry of Finance and Economic Planning
MINEDUC	: Ministry of Education
N ^o	: Number
NGOs	: Non-Governmental Organisations
O.G	: Official Gazette
OAU	: Organisation of African Unity
OHCHR	: Office of the High Commissioner for Human Rights
OL	: Organic Law
PBE	: Post-Basic Education
PRSP	: Poverty Reduction Strategy
PULP	: Pretoria University Law Press
SADPD	: Secretariat of the African Decade of Persons with Disabilities
TVET	: Technical Vocational Education Training
UDHR	: Universal Declaration of Human Rights
UNDP	: United Nations Development Programme
UNESCO	: United Nations Educational, Scientific and Cultural Organization
UNICEF	: United Nations for Children's Fund
WCEFA	: World Conference on Education for All
www	: World Wide Web

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ABSTRACT

This research approached the issue of the right to education for children with disabilities in Rwanda. It sought to analyse Rwandan international obligations regarding the right to education of the above mentioned category of children. It also sought to explore Rwandan legal and policy frameworks that were designed to protect and promote the right to education of these children.

The research found that some of the provisions of Rwandan legal frameworks do not align with international standards because they focus on segregation rather than on inclusion. The study found also that some policy and strategic frameworks, either overlook the issue of the inclusive education, or do not provide comprehensive strategies to deal with this human rights issue.

The research recommended that the amendment be made with respect to the policy and strategic plan framework that disregard or do not provide comprehensively the right to education for children with disabilities. It also urged that the discriminatory provisions be repealed. Finally, the research recommended that the GoR should elaborate a specific policy that promotes inclusive education in order to reach to the education for all by 2015.

Chapter I

GENERAL INTRODUCTION

1.1. Background and problem statement to the study

In international human rights law, children with disabilities have been granted the rights on the basis of their status as human persons who are children. These rights include *inter alia* the right to health, the right to rest, leisure, play, recreational activities, cultural life and the arts,¹ the right to be heard,² the right to education, etc.

However, the right to education of children with disabilities has been denied for too long. Historically, children with disabilities were excluded from education for the assumption that they were ‘inferior and unable to benefit from education.’³ As a result, children with disabilities form a significant proportion of the out-of-school population particularly in Africa and their right to access quality education is too often violated. However, the right to education is universal and is extended to all children, including children with disabilities. This right is enshrined in the Convention on the Rights of the Child (1989) and addressed in several significant, internationally approved declarations, including the World Declaration for Education for All (1990), the Standard Rules on the Equalization of Opportunities for Persons with Disability (1993), the UNESCO Salamanca Statement and Framework for Action (1994), and the Dakar Framework for Action (2000).

The goal of the Dakar Framework for Action is to achieve ‘education for all’ by 2015.⁴ This might only be achieved when all nations recognize that the universal right to education extends to individuals with disabilities, particularly children with disabilities. Furthermore, it might also be achieved when all nations act upon their obligation to establish or reform public education systems that are accessible to, and meet the needs of children with disabilities.

¹ General comment No. 17 (2013) on The right of the child to rest, leisure, play, recreational activities, cultural life and the arts, para 2, 18 March 2013, CRC/C/GC/17.

² General comment No. 12 (2009) on the right of the child to be heard, para 2, 25 May-12 June 2009, CRC/C/GC/12.

³ J Balescut and K Eklinth *Literacy and persons with developmental disabilities: Why and how*, Global monitoring report (2006) 1.

⁴ UNESCO, ‘Education and Disability: The flagship on education for all and the right to education for persons with disabilities: towards inclusion’ http://www.unesco.org/education/efa/known_sharing/flagshipinitiatives/disability_last_version.shtml (accessed on 15 March 2013).

Although progress has been made in many countries towards achieving the Millennium Development Goal of universal primary education and the goal of Education for All, many children with disabilities are still facing widespread segregation from education.⁵ UNESCO estimates that ‘98% children with disabilities in developing countries do not attend schools.’⁶

Rwanda is one of the developing countries in which, children with disabilities face stigma and are excluded from school and community life. In Rwanda, many children with disabilities live hidden by their parents who consider them a curse or burden for their respective families or considered to be a punishment from God. Children with disabilities are dependent on parents and other family members for assistance with dressing, eating, and toileting, as well as for social, psychological, and economic support. When caregivers within a family die from HIV/AIDS for instance, the children with disabilities is already in a vulnerable group and is even at greater risk. In such situation, they may end up on the streets and can easily become involved in crime, sex work, and drugs which expose them at the high risk of being infected or affected by HIV/AIDS because they did not get a chance to be educated and informed including about HIV.

Since the introduction of the ‘Education for All’ policy in Rwanda, children with disabilities have been enrolled in schools, but still their numbers are limited.⁷ Ingrid Lewis, in her comparative study on education for disabled people in Rwanda and Ethiopia, found that most disabled people lack access to education, and illiteracy among disabled Rwandans is higher than in the general population.⁸

The Rwandan Education Sector Strategic Plan 2006-2010 stated that ‘10% of all students suffer from some forms of disability.’⁹ Yet, Rwanda’s Special Needs Education Policy also stated that ‘only 1713 disabled pupils are known to be cared for in schools or rehabilitation centres.’¹⁰ The policy does not indicate what level of education or type of education these

⁵ P Lei and K Gooding ‘Getting Disabled Children into School in developing countries: What donor governments must do to achieve Universal Primary Education’ (2007) *Briefing* 1.

⁶ UNESCO ‘Reaching the marginalized: EFA Global Monitoring Report’ (2010) <http://unesdoc.unesco.org/images/0018/001866/186606E.pdf> (accessed on 16 March 2013).

⁷ B Jean Pierre ‘Challenges of raising children with disabilities’ *The new times* 24 July 2012.

⁸ I Lewis ‘Education for disabled people in Ethiopia and Rwanda: Background paper prepared for the Education for all Global monitoring report’ (2009)11.

⁹ MINEDUC, ‘The Rwandan Education Sector Strategic Plan 2006-2010’ <http://www.mineduc.gov.rw> (accessed on 10 November 2012).

¹⁰ MINEDUC (n 9 above).

pupils are in and none of the above sources give statistics on disabled learners according to impairment. Furthermore, the 2010 UNESCO Global Monitoring Report¹¹ on Education for All (EFA) concludes also that, there is a small inclusion of children with disabilities in schools in Rwanda. A few attend their local mainstream school, though most go to special schools. These are mainly for children with visual or hearing impairments and located in urban areas, too far for most Rwandans.

In light of the above discussion, this study analyses Rwanda's international, regional and domestic legal obligations to provide education to the children with disabilities. It examines the statutes, policies and strategic plans relating to education of disabled and considers whether domestic laws, policies and strategies align with the relevant international human rights obligations related to the education of children with disabilities and HIV.

1.2. Research questions

The following research questions are the foundation of this study:

1. What are the human rights obligations that Rwanda has under international law with respect to ensuring access to education for children with disabilities?
2. Did Rwanda enact legal, policy and strategic frameworks with respect to access to education for children with disabilities?
3. Do these frameworks align with international standards designed for the protection of the right to education for children with disabilities? If not, what are the gaps and weaknesses of these frameworks?
4. What should Rwanda do in order to improve the existing frameworks in relation to the protection and fulfilment of the right to education for children with disabilities?

1.3. Significance of the Study

There has not been a major academic study analysing Rwanda's human rights obligations under international law with respect to access to education for children with disabilities. As a result, this study is relevant as it analyses the international human rights instruments that have been signed and ratified by Rwanda, specifically the ones relating to

¹¹ <http://www.unesco.org/new/en/education/themes/leading-the-international-agenda/efareport/>, (accessed on 15 November 2012).

the education's right of children with disabilities. Furthermore, the study also provides an academic analysis of legal, policy and institutional frameworks that have been enacted to implement the education rights of children with disabilities in Rwanda. By doing so, the study highlights the gaps, weaknesses and challenges in the above said frameworks. Finally, the conduct of this study is useful as it may play a key role in reforming laws and policies that may delay the implementation of the right to access education for children with disabilities.

1.4. Research methodology

This study is based on desk research. It is not an empirical research. Thus, it draws mainly on international human right law by reviewing various international instruments relating the right to education for people living with disabilities in general and for children with disabilities in particular. These are read in conjunction with the recent case law relating to the issue of the right to education of children with disabilities. It also reviews and analyses Rwanda's laws, policies and strategies and available literature, written by renowned scholars and jurists in the field of the right to access education for children with disabilities, such as, journal articles, books, legal briefings, the UN reports and other intimately linked references via the internet.

1.5. Literature review

In this study, the literature review aims to understand views from different authors about exclusion and inclusion of children with disabilities into schools. There are unfortunately few studies and academic literature that have analysed specifically the issue of access to education for children with disabilities in Rwanda and how the legal and policy protection frameworks align with international human rights instruments relating to access to education for children with disabilities. However, several writers globally looked at the issue of children with disabilities and have revealed that, this vulnerable group faces serious problem of discrimination and illiteracy which end up being victims of poverty and HIV.

Thus, Marcia H. Rioux, Lee Ann Bassler and Melinda Jones dealt with some issues that are central to a critical approach to human rights and disability law. They highlighted the denial

of rights to people with disabilities especially children.¹² In addition, the EFA Global Monitoring Report 2010 revealed that ‘marginalized children with disabilities remain one of the main groups being widely excluded from quality education.’¹³ In this report, disability was recognised as ‘one of the least visible yet most potent factors in educational marginalisation.’¹⁴

The 2006 General comment of the CRC Committee noted that some cultures still view a child with disabilities as ‘a bad omen that may tarnish the family pedigree.’¹⁵ This results in hiding away children with disabilities and excluding them from education. Moreover, a mother may be blamed when the disabled child is born and the father may subsequently abandon the family because of the birth of a child with any form of disability.

In view of the above scenario, the principle of inclusive education initiative was set up by the international community. Susan J. Peters pointed out that this principle implies fundamentally that:

[A]ll children should learn together, wherever possible, regardless of any difficulties or differences they may have. Inclusive schools must recognize and respond to the diverse needs of their students, accommodating both different styles and rates of learning and ensuring quality education to all through appropriate curricula, organizational arrangements, teaching strategies, resource use and partnerships with their communities. There should be a continuum of support and services to match the continuum of special needs encountered in every school.¹⁶

The Indian National Focus Group on education of children with special needs in its position paper stated that:

Segregation or isolation is good neither for learners with disabilities nor for general learners without disabilities. Societal requirement is that learners with special needs should be educated along with other learners in inclusive schools, which are cost effective and have sound pedagogical practices.¹⁷

This situation highlights the role of state in protecting the children with disabilities. In this context, Claire Breen has underlined the state’s obligations both international and national

¹² MH Rioux et al *Critical perspectives on human rights and disability law* (2000)2.

¹³ UNESCO ‘Reaching the marginalized: EFA Global Monitoring Report’ (2010) <http://unesdoc.unesco.org/images/0018/001866/186606E.pdf>, accessed on 16 March 2013.

¹⁴ UNESCO (n 13 above).

¹⁵ General Comment on the right of children with disabilities (2006) para. 31.

¹⁶ J Susan Peters ‘Inclusive education: an EFA strategy for all children’ <http://www.worldbank.org> (accessed on 23 July 2013).

¹⁷ P Rajakumar ‘Position paper on education of children with special needs’ http://www.ncert.nic.in/newncert/ncert/rightside/links/pdf/focus_group/special_ed_final1.pdf (accessed on 22 July 2013).

level to provide the right to education of children with disabilities.¹⁸ Thus, as far as this literature review has focused on the right to education of children with disabilities, the specific target of this study deals with inclusion in education of children with disabilities in the context of Rwanda.

1.6. Outline of chapters

This study is structured into four chapters. The first chapter introduces the thesis and its focus. It provides a brief overview of the study, sets out the legal problem, the justification for the study, the key research questions, and the scope of the study, the literature review and its significance and the outline of the study. The second chapter focuses on analysis of Rwanda's human rights legal obligations to protect and provide the right to education to children with disabilities.

The third chapter analyses critically the legal, policy and institutional frameworks governing the education of children with disability in Rwanda. It highlights efforts made by the Government of Rwanda and the challenges that the GoR is faced with; in its efforts to fulfil its human rights obligations under international law. The chapter provides finally measures that might be adopted by the GoR to ensure the realisation of access to education for children with disabilities in Rwanda. The final chapter concludes by outlining the findings in summary, and proposes some suggestions for reform.

1.7. Definition of terms

1.7.1. Children

According to the United Nations Convention on the Rights of the Child¹⁹ and the African Charter on the Rights and Welfare of the Child²⁰ define a child as any human being under the age of eighteen. Rwandan laws give various dimensions under which a child might be legally

¹⁸ C Breen *The right to education of persons with disabilities: Disabled in interpretation and application* (2003) 24-25.

¹⁹ Article 1 of the United Nations Convention on the Rights of the Child, adopted on 20 November 1989 and entered into force on 2 September 1990.

²⁰ Article 2 of the African Charter on the Rights and Welfare of the Child entered into force 29 November 1999.

understood. Thus, Rwandan Law relating to the rights and the protection of the child, for instance, defines the ‘child as any person under the age of eighteen years.’²¹

1.7.2. Disability

The CRC committee adopts the definition from the draft text of the Disability Convention for purposes of its General Comment on the rights of children with disabilities. Persons with disabilities 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.’²²

The Convention on the Rights of Persons with Disabilities does not explicitly define ‘disability’ or persons with disabilities in the strict sense. But rather, it provides some guidance on the concept of ‘disability’ and its relevance to the convention.²³ However Rwandan law relating to protection of disabled persons in general attempted to define ‘disability.’ In its article 2, the Law states that, ‘disability ... means the condition of a person’s impairment of health ability he or she should have been in possession, and consequently leading to deficiency compared to others.’²⁴

1.7.3. Children with Disabilities

The UN Convention on the rights to the persons with disabilities does not define the term ‘Children with disabilities.’ As well, Rwandan Law on disability rights does not define this term in particular. However, Rwandan Law only defines ‘persons with disabilities’ which in my view include children with disabilities in general.²⁵ Law N° 01/2007 of 20/01/2007 relating to protection of disabled persons in general stipulates that ‘a disabled person is any individual who was born without congenital abilities like those of others or one who was deprived of such abilities due to disease, accident, conflict or any other reasons which may cause disability.’

²¹ Art. 3 (10^o) of the Law n°54/2011 of 14/12/2011 relating to the rights and the protection of the child in the *Official Gazette* n°26 of 25/06/2012.

²² General Comment No 9 (2006) on the right of children with disabilities, 27 February 2007, CRC/C/GC/9. For more details, see also JS Nielsen *Children’s Rights in Africa: A Legal Perspective* (2008)303.

²³ OHCHR ‘Monitoring the Convention on the Rights of persons with disabilities: in guidance for human rights monitors’ (2010) 17 *Professional training series* 15.

²⁴ Law N° 01/2007 of 20/01/2007 Law relating to protection of disabled persons in general, in the *Official Gazette*, special number of 21/05/2007.

²⁵ Law N° 01/2007 of 20/01/2007 (n 24 above) article 2 para. 2.

Basser and Jones point out that the concept of children with disabilities includes ‘[children] whose activity is limited by physical disabilities, those with visual or hearing disabilities, those with chronic illness, mental health and communication disorders, those with intellectual disabilities, genetic disorders and disfigurement.’²⁶

1.7.4. Education

As an empowerment right, education is the primary vehicle by which economically and socially marginalized adults and children can lift themselves out of poverty and obtain the means to participate fully in their communities.²⁷ The UN Convention against Discrimination in Education defines ‘education’ as ‘all types and levels of education and access to education, the standard and quality of education, and the conditions under which it is given.’²⁸ There is no law in Rwanda that defines ‘education.’ However, the Rwandan Education Sector Policy attempted to define the term ‘education’ as a sector that aims to combat ignorance and illiteracy and to provide human resources useful for the socio-economic development of Rwanda.²⁹

8. Limitations and delineations

The nature and scope of the study limits and delineates this research in some ways. Firstly, whereas there is a need for effective legal, policy and institutional frameworks for the implementation of the right to education of children with disability in Rwanda, the scope of this study is limited only to the analysis of the human rights obligations with respect to access to education. It does not concern other human rights obligations such as health’s right, etc. With respect to delineation, the research only addresses on a specific geographical scope as it only touches on issues relevant to Rwanda. Any reference to other African or American jurisdictions serves however to give clarity on the Rwandan issues under discussion.

²⁶ J Sloth-Nielsen *Children’s Rights in Africa: A Legal Perspective* (2008)303.

²⁷ M Nyongesa *Legal protection of social and economic rights of children in developing Countries: Reassessing International Cooperation and Responsibility* (2010)64.

²⁸ Art. 1 (2) of the the UN Convention against Discrimination in Education, adopted by the UNESCO General Conference at its eleventh session, Paris, 14 December 1960.

²⁹ MINEDUC *Education Sector Policy* (2003)7.

Chapter II

RWANDA'S INTERNATIONAL OBLIGATIONS IN RELATION TO THE RIGHT OF EDUCATION FOR CHILDREN WITH DISABILITY

2.1. Introduction

Rwanda has a variety of obligations towards its inhabitants. Among these obligations, there is the duty to respect, protect and fulfil the rights of children with disabilities. The obligation to respect entails that Rwanda should refrain from interfering in the enjoyment of the right. Consequently, the GoR should abstain from excluding children with disabilities from school. As for the obligation to protect, the GoR is required to protect the right to education for children with disabilities from being interfered by third parties (for instance, their parents and relatives) by enacting legislation, policy and strategies that prevent the violation of this right. In this context, it is the duty of the GoR to create and maintain effective interplay of enacted laws and regulations so that children with disabilities can be able to enjoy fully their right to education.

Additionally, the obligation to fulfil requires the GoR to fulfil the obligations committed to under human rights laws. Thus, the GoR is obliged to move its adopted laws, institutional bodies and other measures towards the realisation of the human rights of education for children with disabilities. The GoR should also fulfil its obligation to ensure that the right to education is available, accessible, acceptable and adaptable to the children with disabilities and HIV.³⁰

The above duty stems from international and regional human rights law treaties and soft law. Thus, this chapter explores the GoR's obligations, in relation to the right to education for children with disabilities and HIV, under global, regional and sub-regional human rights law instruments (both binding and non-binding).

³⁰ S Kearny et al 'Enhancing enforcement of economic, social and cultural rights using indicators: A focus on the right to education in the ICESCR' (2010) 32 *Human Rights Quarterly* 275.

2.2. Rwanda's obligations under international, regional and sub-regional treaties

Rwanda has ratified all relevant international and regional human rights treaties that include provisions relating to the right to education of children with disabilities. These treaties include *inter alia* the International Covenant on Economic, Social and Cultural Rights (ICESCR), International Covenant on Civil and Political Rights (ICCPR), UN Convention on the Rights of the Child (CRC), UN Convention on the Rights of Persons with Disabilities (CRPD), the African Charter on Human and Peoples' Rights, the African Charter on the Rights and Welfare of the Child, etc. The above international and regional instruments and others which are relevant to this study are explored thematically throughout the following sub-sections.

2.2.1. Obligations at global level

2.2.1.1. Obligations arising from the international bill of human rights

As stated above, the obligations on the right to education have been included both in non-binding and binding international and regional human rights instruments. The Universal Declaration of Human Rights (UDHR)³¹ was the first international instrument that entitled the universal right to education. This right, as proclaimed by the Universal Declaration of Human Rights, occupies a central place in human rights law and is of key importance for the exercise of all other human rights. No civil, political, economic and social rights can be exercised by individuals without a basic education. The UDHR sets the legal basis for the right to education in its article 26 (1) which binds State to ensure that 'everyone has the right to education.' However, it is important to point out that the UDHR is not a binding instrument.

Subsequent to the adoption of the UDHR, as a non-binding instrument, the international community agreed that the rights enacted in the UDHR should be translated into conventions that would directly bind States which agreed to their terms.³² This resulted in the adoption of two Covenants namely, International Covenant on Economic, Social and Cultural Rights (ICESCR) and International Covenant on Civil and Political Rights (ICCPR). Together with

³¹ The UDHR was adopted unanimously by the General Assembly on 10 December 1948.

³² The UDHR had much influence on international human rights law. Its provisions have inspired the ICCPR, ICESCR and other several regional human rights treaties including the African Charter of Human and Peoples' Rights (ACHPR).

the Universal Declaration of Human Rights, the above Covenants are recognised as forming the ‘International Bill of Human Rights.’³³

The adoption of the ICESCR marked the first solemn international commitment to the right to education.³⁴ The Covenant devotes two articles (articles 13 and 14) to its different dimensions, specifying the obligation to secure compulsory primary education free of charge and to take steps towards achieving free secondary and higher education.³⁵ The ICESCR, under article 2, imposes the obligation on States to take steps including the adoption of legislative measures to ensure that the rights under the Covenant are fully realised regardless of a person’s status. The ratification of the ICESCR created a legally binding obligation on the State of Rwanda to protect the right to education of children with disabilities.

The protection of this right is further elaborated by the United Nations Committee on Economic, Social and Cultural Rights (UNCESCR), *via* the General Comment N^o 13, in terms of which States ‘have immediate obligations in relation to the right to education, such as the “guarantee” that the right “will be exercised without discrimination of any kind”.... and the obligation “to take steps”....towards the full realisation of article 13.’ The CESCR Committee highlights three types of obligations on States, namely, ‘the obligations to respect, protect and fulfil.’³⁶ It further obliges States to ensure availability, accessibility, acceptability and adaptability of education as ‘interrelated and essential features’ of education.³⁷ Finally, the CESCR Committee recommends States to ‘ensure that an educational fellowship system is in place to assist disadvantaged groups [including the children with disabilities].’³⁸

³³ Both the ICCPR and the ICESCR was adopted on 16 December 1966 and entered into force on 23 March 1976. See UN General Assembly Resolution 2200 A (XXI) of 16 December 1966. Rwanda ratified both Covenants on 12 February 1975. See the Decree-Law No 8/75 of 12 February 1975 in O.G. No 5 of 01 March 1975, p. 230.

³⁴ J Belbruck ‘The right to education as an international human right’ (1992) 35 *German Yearbook of International Law* 92.

³⁵ Office of the United Nations High Commissioner for Human Rights ‘The United Nations human rights treaty system: An introduction to the core human rights treaties and the treaty bodies’ *Fact Sheet* N^o 30, p.14.

³⁶ General Comment n^o 13 on the right to education, para 46. According to the Committee, ‘[t]he obligation to respect requires States parties to avoid measures that hinder or prevent the enjoyment of the right to education. The obligation to protect requires States parties to take measures that prevent third parties from interfering with the enjoyment of the right to education. The obligation to fulfil (facilitate) requires States to take positive measures that enable and assist individuals and communities to enjoy the right to education. The obligation to fulfil incorporates both an obligation to facilitate and an obligation to provide.’ Quoted from paras. 46 and 47 of General Comment No 13 on the right to education.

³⁷ General Comment No 13 on the right to education, para 6. See also, S Kalanry et al (n 30 above) 275.

³⁸ General Comment No 13 on the right to education, para 53, adopted on 8 December 1999, UN Doc. E/C.12/1999/10.

However, it is important to note that the above instrument does not expressly address the children with disabilities. It only provides a broad framework on the right to education. In other words, they refer both to adults and children with or without disabilities.³⁹

Finally, in light of the above human rights obligations arising from international bill of human rights, the GoR is obligated to ensure that all people have access to education particularly children with disabilities. Hence, it has an obligation to put in place legal and policy frameworks that promote and protect the right to education for children with disabilities.

2.2.1.2. Obligations arising from other global conventions

In addition to the international bill of human rights, subsequent conventions that address the right to education have been concluded. These conventions include the Convention on the Rights of the Child (CRC), the Convention against discrimination in education, the Convention on Technical and Vocational Education and the UN Convention on the Rights of Persons with Disabilities (CRPD). This sub-section explores the above conventions with respect to the States obligations to respect and protect the right to education for children with disabilities.

The Convention on the Rights of the Child is the first treaty to deal comprehensively with the rights of a specific group of people.⁴⁰ This Convention was adopted by the General Assembly on 20 November 1989 and entered into force on 02 September 1990.⁴¹ Rwanda ratified this convention on 19 September 1990.⁴²

Whilst children, as human beings under eighteen years old, enjoy obviously all of the human rights set out in the other international conventions, ‘the restatement of these rights with

³⁹ G Alfredsson and A Eide *The Universal Declaration of Human Rights: A common standard of Achievement* (1999) 554.

⁴⁰ S Detrick *A commentary on the United Nations Convention on the Rights of the Child* (1999) 14.

⁴¹ UN General Assembly Resolution 44/25 of 20 November 1989. The elaboration of this Convention was based on the Declaration on the Rights of the Child proclaimed by the UN General Assembly Resolution 1386(XIV) of 20 November 1959.

⁴² Presidential Order n° 773/16 of 19/09/1990 in *O.G.* No 21 of 01/11/1990, p. 1160.

emphasis on the particular circumstances of children in a single comprehensive document provided an opportunity to develop additional provisions relevant to children.’⁴³

In regard to the right to education, the Convention on the Rights of the Child (CRC) recognises this right for all children, including those with disabilities.⁴⁴ Furthermore, the CRC Committee emphasizes the right to education of children with disabilities in its General comment No 9 on the rights of children with disabilities. The Committee points out that ‘[c]hildren with disabilities have the same right to education as all other children and shall enjoy this right without any discrimination and on the basis of equal opportunity as stipulated in the Convention [on the Rights of the Child].’⁴⁵ Moreover, the CRC Committee, *via* its General Comment No 3 on HIV/AIDS and the rights of the child, went beyond and included also the children with HIV. In this respect, the Committee reminded ‘the States parties of their obligation to ensure that primary education is available to all children, whether infected, orphaned or otherwise affected by HIV/AIDS.’⁴⁶

The right to education of children with disabilities is also enshrined in the Convention against Discrimination in Education.⁴⁷ As an essential part of the body of international law, this Convention has developed the content, and taken into account all the aspects of the right to education.⁴⁸ It seeks both to eliminate discrimination in education and adopt positive measures to promote equality of opportunity and treatment for all persons in this field.⁴⁹

Thus, article 3 and 4 of this Convention provide obligations of the States parties that are particularly significant. These articles contain the provisions relating to the commitments made by the States parties to the Convention. Hence, the States that have ratified the convention must, under their obligation to implement the Convention, take all the domestic

⁴³ Office of the United Nations High Commissioner for Human Rights ‘The United Nations human rights treaty system: An introduction to the core human rights treaties and the treaty bodies’ *Fact Sheet* N^o 30, p.18.

⁴⁴ Art. 23, 28 and 29 of the Convention on the Right of the Child.

⁴⁵ General Comment N^o 9 on the rights of children with disabilities, para 62, 27 February 2007, CRC/C/GC/9.

⁴⁶ General Comment No 3 on HIV/AIDS and the Rights of the Child, para 18, 17 March 2003, CRC/GC/2003/3.

⁴⁷ Convention against Discrimination in Education of 14 December 1960.

⁴⁸ This convention is the first UNESCO’s international treaty instrument which had a binding force in international law. It drew its inspiration from two distinct and fundamental principles found in both the UNESCO Constitution (1945) and the Universal Declaration of Human Rights (1948). See article 2 and 26 of the UDHR. This convention was adopted by the General Conference of the UNESCO at its eleventh session, on 14 December 1960 and entered into force on 22 May 1962. Rwanda acceded to this Convention on 28 December 2000. See UNESCO ‘Ratified convention’ <http://www.unesco.org>, (accessed on 14 April 2013).

⁴⁹ HG Espiell *Significance of the Convention against discrimination in education* (2005) 4.

legislative and regulatory measures necessary to abrogate any texts that are contrary to the Convention and to adopt those that will bring their legislation into line with it.

Although there is no articles in this Convention which is devoted to the fight against discrimination in education with regard the children with disabilities, it is clear that discrimination based on disability was dealt in this convention in general. Thus, acceding to the provisions of the Convention imposes a number of obligations upon the State of Rwanda, as a State party. The Convention has binding force and Rwanda must incorporate its provisions in its national constitutions or domestic law. Accordingly, Rwanda must give effect to those provisions in its national legal systems and in its education policies.

The fundamental right to education of children with disabilities is also reflected in the other instruments elaborated by UNESCO in that field such as Convention on Technical and Vocational Education.⁵⁰ Article 2 (4) of this Convention states that '[t]he contracting States shall pay attention to special needs of the handicapped and other disadvantaged groups and take appropriate measures to enable these groups to benefit from technical and vocational education.' In light to the above provision, the right to education of children with disabilities is also protected as children with disabilities are part of 'handicapped' group. Rwanda accessed to this Convention on 28 December 2000.⁵¹ Thus, Rwanda is obliged to protect and fulfil the technical and vocational education right of the children with disabilities.

Finally, along with the above conventions, the Convention on the Rights of Persons with Disabilities (CRPD) was adopted by the United Nations General Assembly on 13 December 2006.⁵² The entry into force of this Convention and its Optional Protocol in May 2008 marked the beginning of a new era in the efforts 'to promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities, and to promote respect for their inherent dignity.'⁵³

Although persons with disabilities have always been entitled to the same rights under the core international human rights instruments that precede the Convention on the Rights of Persons

⁵⁰ This convention was adopted by the General Conference of the UNESCO at its twenty-fifth session, on 10 November 1989 and entered into force on 29 August 1991.

⁵¹ UNESCO 'Ratified convention' available at <http://www.unesco.org>, (accessed on 14 April 2013).

⁵² It was adopted during the sixty-first session of the UN General Assembly, by Resolution A/RES/61/106. It entered into force on 03 May 2008.

⁵³ Art. 1 of the Convention on the rights of persons with disabilities, *Treaty Series*, vol. 2515, p. 3.

with Disabilities, it was the first time that their rights are set out comprehensively in a binding international instrument.⁵⁴

The Convention on the Rights of Persons with Disabilities (CRPD) provides a powerful new momentum to promote and protect the human rights of all children with disabilities. Accordingly, like previous conventions, the CRPD enshrines the fundamental right to education and includes several provisions which are relevant to the context of disability. For instance, article 24 of the Convention requires States parties to recognise the rights to education for disabled people including children with disabilities.⁵⁵ Furthermore, States parties are required to ensure an inclusive education system as the most effective means of combating discriminatory attitudes and achieving education for all.⁵⁶

Rwanda ratified the Convention and its optional protocol on 15 December 2008.⁵⁷ Accordingly, Rwanda has also obligations arising from this Convention, to respect, protect and fulfil the right to education for children with disabilities by ensuring an inclusive education system. Definitely, Rwanda has to ensure that children with disabilities enjoy effectively, their right to education on an equal basis with others.

2.2.2. Obligations at regional and sub-regional level

A number of binding treaties that aim at protecting various human rights guaranteed at the international level have been enacted at regional (African) level.⁵⁸ One of these treaties which is also the first and the main African human rights treaty is the African Charter on Human and Peoples' Rights.⁵⁹ This was adopted on 27 June 1981 and entered into force 21 October 1986 by the Assembly of Heads of State and Government of the OAU in Nairobi, Kenya.

⁵⁴ M Schulze *A handbook on the human rights of persons with disabilities: Understanding the UN Convention on the rights of persons with disabilities* 3ed (2010) 21.

⁵⁵ As it was commented by the CRC Committee, education plays 'a critical role in providing children with relevant and appropriate information on HIV/AIDS, which can contribute to increased awareness and better understanding of this pandemic and prevent negative attitudes towards victims of HIV/AIDS.' Quoted from the General Comment No 3 (n 46 above) para 8.

⁵⁶ Schulze (n 54 above) 133.

⁵⁷ 'List of States ratified the Convention on the rights of persons with disabilities', as of 10 April 2013 <http://www.un.org> (accessed on 10 April 2013).

⁵⁸ K Kithure 'Legal protection of persons with disabilities in Kenya: Human rights imperatives' in MH Rioux et al *Critical perspectives on human rights and disability law* (2011) 316.

⁵⁹ OAU Doc. CAB/LEG/67/3 rev. 5, 21 *I.L.M.* 58 (1982).

Rwanda ratified the Charter on 17 May 1983.⁶⁰ The African Charter on Human and Peoples' Rights recognises individual rights as well as people's rights and duties, and some socio-economic rights in addition to civil and political rights.⁶¹ The Charter stipulates such rights as equality⁶² and non-discrimination⁶³ both important to the protection of the right to education of children with disability. The Charter is of importance for this study as it has two specific provisions addressing disability (art. 18 (4) and education (art. 17(1)). Accordingly, States parties to the Charter including Rwanda are obligated to protect the rights reflected in the Charter. States parties should adopt 'legislative and other measures'⁶⁴ to give effects to the rights contained in the Charter, particularly, for access to education for children with disabilities.

In addition to the protection of the right contained in the Charter, art. 25 of the Charter imposes a special obligation to the States parties to ensure the understanding of the rights contained in the Charter through publication, education, and teaching of the rights. As a result, States parties are required to disseminate all pieces of information related to inclusive education, particularly for children with disabilities.

The African Charter on the Rights and Welfare of the Child is the regional human rights framework specialised for children's rights perspective. The Charter⁶⁵ was adopted on 11 July 1990 and entered into force on 29 November 1999.⁶⁶ Rwanda ratified the Charter on 30 May 2000.⁶⁷ Generally, the African Charter on the Rights and Welfare of the Child is similar to the UN Convention on the Rights of Child. However, under the African Children's Charter, children appear to be protected at a high level because the later provides 'an individual complaint procedure.'⁶⁸ From this procedure, children, including those with disabilities, have been granted the power to trigger the jurisdiction of the Committee on the

⁶⁰ Law No 10/1983 of 01 July 1983 in O.G No 13 of 01 July 1983, p. 343.

⁶¹ C Heyns and M Killander (eds) *Compendium of key human rights documents of the African Union* 4ed (2010) 29.

⁶² See art. 2 of the African Charter.

⁶³ n 62 above, article 3.

⁶⁴ n 63 above, article 1.

⁶⁵ OAU Doc. CAB/LEG/24.9/49 (1990)

⁶⁶ A Lloyd 'The African regional system for the protection of children's rights' in JS Nielsen (n 22 above) 35.

⁶⁷ See the Presidential order No 11/01 of 30 May 2001 in O.G n° 22 of 15 November 2001, p. 58.

⁶⁸ Heyns and Killander (eds) (n 61 above) 77.

Rights and Welfare of the Child on alleged violations of their rights including education rights.⁶⁹

Article 11 of the African Children's Charter is of particular importance for the purpose of this study. This article provides explicitly that 'every child shall have the right to an education.' Meanwhile, it is important to note that this article is widely worded and does not specifically address the issue of children with disabilities. However, article 13 of the Children's Charter deals with the rights of children with disabilities. Article 13 (2) imposes on States parties, including Rwanda, an obligation to ensure that the disabled child has effective access 'to training, preparation for employment and recreation opportunities in a manner conducive to the child achieving the fullest possible social integration, individual development and his cultural and moral development.'

The EAC Treaty⁷⁰ is also of importance to this study because it is a binding instrument that imposes certain obligations on its member States, with regard to the right to education of the children with disabilities.⁷¹ Thus, article 102 (2) (i) of the EAC Treaty obliges the Partner States to 'collaborate in putting in place education and training programmes for people with special needs and other disadvantaged groups.' It is important to note that this provision does not specifically mention children with disabilities. However, it is undisputable that 'people with special needs and other disadvantaged groups', as mentioned in the provision, include also children with disabilities. Finally, Rwanda, as a signatory to the EAC Treaty, is obliged under the obligation arising from this Treaty, to respect, protect, promote and fulfil the right of children with disabilities to inclusive education.

2.3. Rwanda's obligations under soft law

Rwanda's obligations to the protection of the right to education of children with disabilities do not only come up under binding international or regional treaties. These obligations are also embodied in the so called 'soft law' (non-binding declarations and statements). Thus,

⁶⁹ T Kaime *The African Charter on the Rights and Welfare of the Child: A socio-legal perspective* (2009) 54.

⁷⁰ The Treaty for the Establishment of the East African Community (1999/2000), as amended on 14 December 2006 and 20 August 2007. It is a sub-regional instrument.

⁷¹ The East African Community was first established in 1967 but became non-operational in 1977. On 30 November 1999, the Community revived with the adoption of a new Treaty by Kenya, Tanzania and Uganda, Arusha in Tanzania. The Treaty entered into force on 7 July 2000 after it was ratified by the founding member States. Membership of the EAC was increased in 2007 with the accession of Burundi and Rwanda to 1999 Treaty. See the 'East African Community Treaty (as amended) (1999/2000)' in S Ebobrah and A Tanoh (eds) *Compendium of African sub-regional human rights documents* (2010) 37.

since 1990s, members of international community have agreed to a number of obligations on international level concerning the access to education for children with disabilities. These obligations have been developed into distinctive declarations around five conferences on education, namely, the World Declaration on Education for All, the Salamanca Statement and its framework of action on inclusive education, the Dakar Framework for Action and its flagship on education for all, the UN Millennium Development Goals (MDGs) and the Second African Decade of Persons with Disabilities (2010-2019). The following section explores Rwandan obligations arising from the above soft law.

2.3.1. The Jomtien Declaration

As it has been argued previously, the Universal Declaration of Human Rights (1948) asserted education to be the basic human right and the foundation of a more just society.⁷² This was reaffirmed in subsequent conventions adopted at regional and international level, seeking to ensure educational opportunities for all children including those with disabilities. The adoption of the above conventions has been followed by a movement that has sought to turn the educational right of the children into reality. The movement, 'Education for All' (EFA) was launched at the World Conference on education for All in 1990. The Conference held in Jomtien, Thailand and convened by the World Bank, UNESCO, UNICEF and UNDP.⁷³

At that juncture, the Conference concluded with the unanimous adoption of the 'World Declaration on Education for All' and endorsed a 'Framework for Action to Meet Basic Learning Needs.' Through these two texts, the international community renewed its commitment to ensuring the rights of all people to education and knowledge. According to the 'Framework for Action to Meet Basic Learning Needs' developed at the WCEFA, national basic education would be composed of four pillars, namely, a four year concentrated, primary cycle for all children which would provide basic reading, writing, numeracy and life skills, both family and environmental; non-formal education for children and adults not reached by schools, especially women; expansion and improvement of early child

⁷² P Magrab 'Education for all and children with disabilities: International policy and practice' (2004)6 *Children for Democracy* 5.

⁷³ The Conference brought together some 1500 people representing 155 governments, 33 intergovernmental bodies, and 125 non-governmental organisations (NGOs), institutes, and foundations. See P Magrab (n 72 above) 5.

development, care and education services; further teaching of basic knowledge and life skills to all the population through the use of the various communication channels.⁷⁴

Although it is a non binding instrument, the above Declaration is of importance for this study as it imposes a number of obligations on all members of the international community with respect to the children with disabilities. Under article 3 (5) of the Declaration, States are required to take special attention for learning needs by providing ‘equal access to education to every category of disabled persons as an integral part the education system.’

2.3.2. The Salamanca statement

In June 1994, the World Conference on Special Needs Education was convened by the Government of Spain in cooperation with UNESCO Representatives⁷⁵ from governments and international organizations met in Salamanca, Spain, from 7 to 10 June 1994 to further the objective of Education for All by considering the fundamental policy shifts required to promote the approach of inclusive education.⁷⁶ Building upon the previous Conferences,⁷⁷ the 1994 World Conference adopted the Salamanca Statement on Principles, Policy and Practice in Special Needs Education and a Framework for Action. These two texts are informed by the fundamental principle of inclusive education. According to the Statement, inclusive education is that ‘all children should learn together, wherever possible, regardless of any difficulties or differences they may have.’⁷⁸ Therefore, inclusive education is considered as ‘the most effective means for building solidarity between children with special needs and their peers.’⁷⁹

2.3.3. The Dakar Framework for Action and its flagship

In April 2000, 176 countries gathered in Dakar, Senegal at the World Forum on Education for All to review the progress made towards the achievement of the goal of Education for All set

⁷⁴ J Bennett ‘Educating young children: A broader vision’ *Notebook* No 14, 1993/94.

⁷⁵ More than 300 personalities representing 92 governments and 25 international organizations participated in the Conference. These include senior education officials, administrators, policy makers and specialists, as well as representatives of the United Nations and the specialised agencies, other international governmental organizations, non-governmental organizations and donor agencies.

⁷⁶ ‘The Salamanca statement and framework for action on special needs education’ <http://www.unesco.org> (accessed on 28 April 2013).

⁷⁷ Universal Declaration of Human Rights (1948), Conclusions from the World Conference on Education for All (1990) and United Nations Standard Rules on the Equalization of Opportunities for Persons with Disabilities (1993).

⁷⁸ The Salamanca Statement (n 76 above) para 7.

⁷⁹ H Combrinck ‘The hidden ones: Children with disabilities in Africa and the right to education’ in Nielsen (n 22 above) 305.

out in the World Declaration on Education for All in Jomtien a decade ago. Consequently, the Forum adopted the Dakar Framework for Action (DFA), Education for All: Meeting our Collective Commitments. The focus of the framework is on collective commitments nationally as well as internationally to ensure that no country is left behind because of a lack of technical capacity or resources. The Framework set out goals and strategies that are designed to enable all individuals to realize their right to learn and to fulfil their responsibility to contribute to the development of their society.⁸⁰

With regard to goals, the Framework lists six major EFA goals to be achieved by 2015. Thus, Goal 2 is of importance to this study, as it requires States to ‘ensure that, by 2015 all children, particularly those difficult circumstances have access to and complete, free and compulsory primary education of good quality.’⁸¹

In addition to the goals set out in the Dakar Framework for Action, the Flagship on Education for All and the Rights of Persons with Disabilities: towards Inclusion was also established in the year 2002. This Flagship was put in place to act as a catalyst to ensure that the right to education and the goals of the Dakar Framework are realized for individuals with disabilities.⁸² The flagship seeks to bring together all partners in its effort to reach out to children, young people and adults with disabilities, and to promote solutions that can translate universal rights into inclusive realities.⁸³

Since it has committed itself to ensure the protection of the right to education for all, Rwanda thus has a soft law obligations, arising from the Dakar Framework for action and its flagship on education for all, to make sure that the universal right to education extends particularly to children with disabilities. Finally, Rwanda has specifically obligation to establish or reform

⁸⁰ Dakar Framework for Action, para 29.

⁸¹ ‘Expanded commentary on the Dakar Framework for Action, para 32 (2000) <http://www.unesco.org> (accessed on 28 April 2013).

⁸² The Flagship programs that are a structured set of activities carried out by voluntary partners to eliminate specific obstacles to achieving Dakar goals through targeted and coordinated actions. These programs assist countries with their national educational plans and provide a focus for a particular aspect of EFA in terms of advocacy, information exchange, advice, and monitoring of progress. Currently there are flagship programs related to girls' education, school health, HIV-AIDS, literacy, emergency situations, early education, quality education, and, most recently, inclusion and disability. Quoted from S Miles and N Singal ‘The Education for All and Inclusive Education debate: Conflict, contradiction or opportunity?’ (2008) *International Journal of Inclusive Education* 7.

⁸³ The Flagship Secretariat is housed in UNESCO.

public education systems that are accessible to, and meet the needs of children with disabilities.

2.3.4. The UN Millennium Development Goals (MDGs)

The commitment to Education for All (EFA) was reiterated in the eight Millennium Development Goals (MDGs) developed by the international community in September 2000.⁸⁴ The Millennium Development Goals were established after a series of World Summits and global conferences with a view to achieving the right to education for all. It is important to note that the MDG(s) were adopted in the same year with The Dakar Framework for Action.

Of eight goals endorsed in the MDGs to be achieved by 2015, Goal 2 is of importance for this study as it focuses on education. According to this goal, States resolved to ensure that, by the year 2015, 'children everywhere, boys and girls alike, will be able to complete a full course of primary schooling and that girls and boys will have equal access to all levels of education.'⁸⁵ Along with 191 other countries, Rwanda adopted the MDGs. Consequently, It has obligations to achieve the goal 2 within the period agreed.

2.3.5. The Second African Decade (2010-2019)

In July 1999, the former Organisation of the African Unity (OAU) declared the period 1999-2009 as the African Decade for Persons with Disabilities.⁸⁶ The decade was extended for another 10 years in October 2008 through the Windhoek Declaration on Social Development adopted by Ministers in Charge of Social Development on 31 October 2008.⁸⁷

African continent took this initiative following the criticism that was made against the UN Decade of Persons with Disabilities (1983-1992). This was criticised for adopting global

⁸⁴ UNESCO 'Education for All by 2015: Global monitoring report 2009, p. 25 <http://www.unesco.org> (accessed on 28 April 2013).

⁸⁵ The UN Millennium Development Declaration, para 19, adopted by UN General Assembly Resolution 55/2, UN Doc A/RES/55/2.

⁸⁶ Combrinck (n 79 above) 312.

⁸⁷ The Secretariat of the African Decade of Persons with Disabilities (SADPD) was established in South Africa during the first decade (1999 – 2009) to facilitate the implementation of the Continental Plan of Action which was drafted in 2001 in Addis Ababa. Quoted from A Sarr and Dube Kudakwashe 'Second African Decade of Persons with Disabilities' <http://www.africandecade.org.za>, (accessed on 29 April 2013).

solutions without considering the political, social and economic context of the developing countries.⁸⁸ In 2002, a Continental Plan for Action was adopted. According to the Plan of Action, the goal of the African Decade of persons with disabilities is ‘full participation, equality and empowerment of people with disabilities in Africa.’⁸⁹ The declaration of the Decade calls upon African States ‘to study the situation of persons with disabilities, with a view to formulating measures favouring equalization of opportunities, full participation and their independence in society.’⁹⁰

The Continental Plan for Action has 12 objectives to achieve. Objective 6 is of importance of this study. From this objective, African States are requested to promote more efforts that encourage positive attitudes towards children with disabilities, and the implementation of measures to ensure their access to education. In order to achieve this objective, African States are required to adopt national measures including the establishment of policies ensuring that children with disabilities have access to relevant education in integrated settings at all levels (para. 29(i)(a)). They are also required to provide training to teachers in mainstream schools, to facilitate the inclusion of children with disabilities (para. 29(i)(e)) and where education is not possible in integrated settings for children with disabilities, special education should be provided (para. 29(i)(b)). Finally, specific budgets should be allocated for the education of children with disabilities (para. 29(i) (c)).

2.4. Conclusion

This chapter consisted in exploring international and regional human rights law (binding and non-binding) that embody obligations in relation to the protection of the right to education for children with disabilities and HIV. Rwanda, as a State member of international community, ratified a number of international and regional treaties that create obligations thereto. In addition to treaties, Rwanda signed also various declarations in relation to the protection of the right to education for children with disabilities.

From these non-binding and binding instruments, Rwanda is internationally, regionally and sub-regionally bound to respect, protect and fulfil the right to education for children with disabilities. Consequently, Rwanda is obligated to enact legal, policy and institutional

⁸⁸ UNESCO (n 86 above) 312.

⁸⁹ Para 16 of the Continental plan of action for the African decade of persons with disabilities (1999-2009)

⁹⁰ n 89 above, para 16.

frameworks that facilitate the implementation of its obligations with respect right to access education for children with disabilities. For that reason, the following chapter analyse critically the Rwanda's frameworks that pertain with the implementation of the right to education for children with disabilities.

Chapter III

A CRITICAL ANALYSIS OF LEGAL, POLICY AND STRATEGIC FRAMEWORKS IN RELATION TO THE RIGHT TO EDUCATION OF CHILDREN WITH DISABILITY IN RWANDA

3.1. Introduction

Rwanda, as a civil law country, is currently a monist state.⁹¹ Thus, international treaties ratified and published in the Official Gazette of Rwanda can be directly applied by domestic courts.⁹² As it was discussed in the previous chapter, the GoR has ratified various international and regional treaties that enshrine the right to education for children with disabilities.⁹³ By ratifying these various treaties, the GoR obliged itself to comply with obligations containing in these treaties. As a result, the GoR is entailed to enact laws, policy and strategies that provide and protect the right to education for children with disabilities.

This chapter aims at exploring whether Rwanda has enacted all of the above frameworks. Then, the chapter explores these frameworks and considers whether they align with relevant international treaties in relation to the right to education of children with disabilities that were

⁹¹ International law and domestic law are normally linked by two separate theories namely, monism and dualism. Monist theory submits that 'international law and national law are manifestations of single conception of law.' Resultantly, international law is directly applied by municipal courts without adoption by the courts or transformation by the national legislative body. This implies that, upon ratification and publication at national level, international instruments became part of the statute law applicable countrywide. Contrastingly, the dualist theory provides that international law and municipal law are separate legal systems. Accordingly, if there is no transformation of international law into domestic law through legislative act municipal courts can not apply it. See, J Dugard *International law: A South African perspective* (2005)47 and M Killander (ed) *International law and domestic human rights litigation in Africa* (2010) 5 and M. Killander and H Adjolohoun 'International law and domestic human rights litigation in Africa: An introduction' in M Killander (ed) *International law and domestic human rights litigation in Africa* (2010) 5.

⁹² In other words, Rwanda does not require implementing legislation before any ratified treaty could have the force of law nationally. See, art. 190 of the Constitution of the Republic of Rwanda of 04 June 2003, as amended to date, published in the Official Gazette, special number of 04 June 2003. This article provides that '[u]pon their publication in the official gazette, international treaties and agreements which have been conclusively adopted in accordance with the provisions of law shall be more binding than organic laws and ordinary laws except in the case of non compliance by one of parties.'

⁹³ These treaties were reviewed in the previous chapter.

ratified by Rwanda. The chapter highlights also their gaps, weaknesses, challenges and attempts to propose the essential amendment.

3.2. Exploring legal frameworks

Within the framework of implementing the right to education for children with disabilities, Rwanda enacted various statutes. For purpose of this study, the following statutes are explored: the Constitution of the Republic of Rwanda as amended to date, the law relating to the rights and the protection of the child, the law relating to the protection of disabled persons in general, the organic law governing organisation of education in general and the law on nursery, primary and secondary education in particular.

3.2.1. The constitutional right to education of the children with disability

The Rwandan 2003 Constitution, the supreme law of the land, recognises, under Title II, Chapter one, most of the fundamental human rights to every person irrespective of physical or mental disabilities and any other form of discrimination.⁹⁴ This provides a green light on the importance the GoR attaches to disability and disability issues.

With regard to the right to education of children with disabilities, article 40 of the Constitution recognises the right to education to every person. It imposes to the GoR an obligation to ‘take special measures to facilitate the education of disabled people.’ However, the above provision is very broad: it does not mention expressly the children with disabilities. It seems that children with disabilities have been assimilated to disabled people because there is no specific provision in the constitution which deals with education of children with disabilities.

Ultimately, the Rwandan constitution as amended to date should be also amended to specifically include a provision that stipulates that children with disabilities shall fully enjoy the right to education and shall not be discriminated on the basis of their disability. This is important as the Constitution forms the foundation of all the subsequent relevant laws relating to the right to education of children with disabilities.

⁹⁴ Art. 11 of the Constitution as amended to date.

3.2.2. Child law⁹⁵

The law relating to the rights and the protection of the child, adopted in 2012, is the primary Rwandan law which provides for government obligations to respect, protect and fulfill the rights of children in general. This law is a comprehensive enactment in Rwanda which gives effect to international children's rights treaties. This law sets out various children human rights including the right to life, the right to health and welfare, the right to a family, the right to access information and right to rest and leisure and the right to education. Thus, article 47 of the law provides that, '[t]he primary education is compulsory and free in public schools.' With regard to the right to education of children with disabilities, article 54 of the law stipulates that:

Children with physical or mental disability shall be entitled to a special protection from the Government and enjoy all the rights recognized to the child without any form of discrimination related to their state or any other situation which would result from it. An Order of the Minister in charge of education shall determine programs and strategies to ensure special education meant for children with disability.

In light of the above provision, it is clear that, the GoR grants the right to education for children with disabilities. However, it is disappointing to note that, at the time of writing, the ministerial order determining programs and strategies ensuring special education for children with disabilities is not yet passed. As for Children with HIV, article 55 of the law declares that '[c]hildren infected or affected by HIV/AIDS shall benefit from a special protection and assistance of the Government...' It is important to mention that some of the children with HIV are also disabled. This implies that the GoR is committed to assist them even in their studies from primary schools to tertiary studies. Furthermore, article 55 provides for an Order of the Minister in charge of health which must determine programs and strategies to ensure protection and assistance to those children. Also, this Order of the Minister in charge of health is not yet enacted.

Finally, although the GoR has made effort to ensure that the right of education for children is protected and fulfilled by enacting the law relating to the rights and protection of the child, the lack of the above implementing acts (ministerial orders) specifically for the realization of the

⁹⁵ Law n°54/2011 of 14/12/2011 relating to the rights and the protection of the child in *Official Gazette* n°26 of 25 June 2012.

right to education for children with disabilities is a major shortfall. The GoR should enact the above ministerial orders so that the right to education for children with disabilities is fully protected.

3.2.3. Protection of disabled persons' law

The Law relating to the protection of disabled persons is among legal frameworks that have been put in place by the GoR to address the issues of persons with disabilities. This law was passed in 2007.⁹⁶ The purpose of this law is to protect disabled persons in general. It provides the rights to disabled persons in matter related to: education, health, employment, culture, entertainment and sports, transport, communication and infrastructure.

With regard to the right to education, article 11 of this law states that;

A disabled person has the right to appropriate education in respect of the nature of his or her disability. The Government or centres which cater for disabled persons who are not able to study with others, shall provide with them modalities to study in a specialized school and shall have qualified and trained teachers and appropriate equipment. The Minister in charge of Education shall, basing on basic categories of disability determined by the Minister in charge of Health, determine modalities of facilitating the needy disabled persons in ordinary schools and in specialized schools in case of failure to study with others.

Like the provisions of the statute laws discussed previously, the above provision deals also with the right of education of disabled persons in general. Moreover, the above provision does not fully align with international obligations as it discusses actions that focus on segregation rather than on inclusion. Thus, this law should be amended to particularly focus on inclusion rather than on segregation by promoting specialized schools. It should be also amended to specifically include a provision relating to the right to education for children with disabilities.

3.2.4. Organic law organising education in general

The education in Rwanda is governed by the Organic Law N°02/2011/OL of 27/07/2011.⁹⁷ The aim of this organic law, as it is entitled, is to organise the education in Rwanda.⁹⁸ This

⁹⁶ Law n° 01/2007 of 20/01/2007 relating to protection of disabled persons in general in O.G n° special of 21 May 2007.

⁹⁷ This Organic law was published in the Official Gazette n° 34 of 22/08/2011.

⁹⁸ Article 1 of the Organic Law N°02/2011/OL of 27/07/2011 Organic Law governing organization of education.

law talk about types of education, partnership in education, types of schools, their property and management, Degrees and Certificates and school personnel.

With regard to the right to education of children with disabilities, article 2 (1) and (11) stipulates that the missions of education in Rwanda is ‘to provide Rwandans with adequate skills at all levels of education and (...) to eliminate all grounds and obstacles that hinder the development of girls and women education as well as of any other groups that need special attention.’ This provision omits also to include expressly children with disabilities though it appears that children with disabilities are among ‘any other groups that need special attention.’

Like the previous law on the protection of disabled persons, this organic law focuses also on segregation rather than inclusion. Thus article 10 of this law institutes specialised schools which aim at admitting students with disabilities. This study urges that this organic law should be amended so that to promote inclusive education.

3.2.5. The law on nursery, primary and secondary education

Subsequent to the enactment of the Organic Law organizing education in general, the Law governing the organisation and functioning of nursery, primary and secondary education was passed in 2012. Like the previous organic law, this law focuses also on segregation with respect to education for children with disabilities. Article 43 of the law establishes specialised schools for children with disabilities. The article stated that, ‘[s]pecialized schools shall be established on the basis of the nature of disability or the type of obstacles facing their beneficiaries.’

Although this law provides that ‘[w]hen the obstacles that prevented a student from attending ordinary schools no longer exist, the student shall be transferred into ordinary schools’⁹⁹ it is undoubtedly that this law does not align with international standards which prohibit discrimination and segregation in school. Like the previous organic law, this law is discriminatory and should be amended in order to focus on inclusion of children with disabilities in the mainstream schools rather than segregating them by establishing their particular schools and classes.

⁹⁹ Art. 47 of law n°23/2012 of 15/06/2012 governing the organization and functioning of nursery, primary and secondary education in the Official Gazette n° 31 of 30/07/2012.

3.3. Investigating policy and strategic frameworks

3.3.1. Policy framework

In an effort to protect and fulfil the right to education of children with disabilities and HIV, Rwanda enacted various policies. For purpose of this study, the relevant policies which will be investigated include *inter alia* the Vision 2020 and different educational policies.

3.3.1.1. The Vision 2020

Within the framework of the necessity for Rwandans to clearly define the future of the country, the GoR adopted the Vision 2020.¹⁰⁰ This policy reflects aspiration and determination of Rwandans to construct Rwandan community. It is built on six pillars including ‘good governance and efficient State, skilled human capital, vibrant private sector, world-class physical infrastructure and modern agriculture and livestock, all geared towards national, regional and global markets.’¹⁰¹ The aim of this vision is ‘to transform our country into a middle-income nation in which Rwandans are healthier, educated and generally more prosperous.’¹⁰²

With regard to education, this Vision highlights the GoR’s commitment to reach ‘Universal Education for All’; this is one of the most important Millennium Development Goals. The Vision stresses the need to educate and train people at all levels: primary, secondary and tertiary, with special attention paid to the quality of education.

However, the Vision does not include anything on the education of the children with disabilities. It makes special emphasis on vocational and technical training of young and women in the field of technology engineering and management.¹⁰³ Consequently, this Vision should be revised because it disregards international standards with regards the right to education of the children with disabilities. Through this Vision, the GoR overlooked its commitment to promote inclusive education and to provide education for all by 2015.

¹⁰⁰ This Vision is a result of a national consultative process that took place in Village *Urugwiro* in 1998-1999.

¹⁰¹ GoR, ‘The Rwandan Vision 2020’ available at <http://www.primature.gov.rw>, (accessed on 22 June 2013)

¹⁰² n 101 above.

¹⁰³ The Rwandan Vision 2020, p. 13.

3.3.1.2. Educational policies

In Rwanda, there is no specific policy relating to the right of education for children with disabilities. The right to education of such children is included in different wider policies. Among these policies, there is the Education Sector Policy which was elaborated by the GoR in 2003. This Policy has led to the elaboration of a series of policies relating to the children's education including, the Special Needs Education Policy (2007), Girls' Education Policy (2008), National Integrated Child Rights Policy (2011) and Early Childhood care and Development Policy (2011).

Of the above policies, the Special Needs Education Policy is a national policy which attempts to respond to the provisions of articles 28 and 2 of Convention on Rights of the Child which provide that education shall be provided to all children without discrimination as to disability of children. However, this Policy was not designed specifically for children with disabilities. It encompasses other different groups of vulnerable children such as orphans, street children and child heads of families. Consequently, the Policy does not deal comprehensively with children with disabilities with respect to their rights to education. The Policy sets out strategies that are not appropriate specifically for children with disabilities.

For this, the GoR should elaborate a specific policy for the promotion and fulfillment of the right to education of child with disabilities. This policy should explain comprehensive strategies that are appropriate for children with disabilities in order to promote inclusive education in Rwanda and to reach education for all.

3.3.2. Strategic plan framework

In addition to policies, the GoR elaborated also strategic plans that facilitate the implementation of the right to education for all. For the purpose of this study, the following strategic plans are explored: the Education Sector Strategic Plan (2010-2015) and Economic Development and Poverty Reduction Strategy 2 (EDPRS 2).

3.3.2.1. The Education Sector Strategic Plan (2010-2015)

Currently, Rwanda does not have a specific strategic plan designed for the education of children with disabilities. The implementation of the right to education of children with disabilities is planned throughout different strategic frameworks. Among these frameworks, there is the Education Sector Strategic Plan. The purpose of this framework is to provide ‘the overarching framework for a holistic sector-wide approach to the development and delivery of education services in Rwanda.’¹⁰⁴ It covers both basic education (pre-primary, primary, lower secondary and adult literacy) and post-basic education (upper secondary, teacher education, TVET and higher education).¹⁰⁵

This Strategic plan has seven main priorities. These are *inter alia*, improving completion and transition rates whilst reducing drop-out and repetition in basic education, ensuring that educational quality continues to improve, developing a skilled and motivated teaching, training and lecturing workforce, ensuring that the post-basic education (PBE) system is better tailored to meet labour market needs, ensuring equity within all fields and throughout all levels of education and training, strengthening education in science and technology and strengthening the institutional framework and management capacity for effective delivery of education services at all levels.¹⁰⁶

With regards to the education of children with disabilities, this strategic plan does not also provide specific strategies for such children. Like the Policy on special needs, this strategic plan is very broad. It deals with the education of children with disabilities together with other groups of vulnerable children such as orphans, street children, children heading households, etc. As it was previously pointed out, broader policy and strategic frameworks are critically inappropriate for children with disabilities because this group of children needs a particular attention more than other groups. The GoR should revise this strategic plan by providing comprehensive strategies specifically for children with disabilities or elaborates a specific plan for children with disabilities.

¹⁰⁴ MINEDUC ‘Education Sector Strategic Plan (2010-2015), p. 3’ available at <http://www.mineduc.gov.rw>, (accessed on 30 June 2013).

¹⁰⁵ MINEDUC (n 104 above).

¹⁰⁶ n 105 above.

3.3.2.3. The EDPRS 2 (2013-2018)

The EDPRS 2 is part of a series of Rwandan medium-term of strategic plans that aim at converting into action the Vision 2020. The first medium-term strategic plan was the Poverty Reduction Strategy (PRSP) finalised in 2001, which covered the period 2002-2006. It was followed by the first Economic Development and Poverty Reduction Strategy (EDPRS) covering the period 2008-2012.

The EDPRS 2 (2013-2018) recognizes education as one of the pillars of the poverty reduction. It focuses on the quality of education and intends therefore to develop measures of education quality, such as the Learning Assessment Survey in Rwanda (LARS) or Early Grade Reading/Numeracy Assessment.¹⁰⁷

However, this strategic plan does not set out comprehensive strategies for promoting education of children with disabilities though it gives special emphasis to the increase of education personnel and teachers with skills in inclusive and special needs education.¹⁰⁸ It only discusses Early Childhood Development (ECD) and Basic Education in general.

3.4. Conclusion

This chapter sought to analyse critically the Rwandan legal and policy frameworks that have a relationship with the right to education of children with disabilities. Among these frameworks, there are the Constitution of the Republic of Rwanda and various legal norms relation to education and disabilities issues in Rwanda.

It is undisputable that the right to education for children with disabilities is formally embodied within Rwandan legislation and policies. This right is mentioned in the 2003 Rwandan Constitution as amended to date and the subsequent laws and policies. However, there are criticisms: Rwandan laws and policies mention education approaches for vulnerable groups of children but they do not firstly explain expressly the key concepts they use. For example, the Education Sector Policy and its current strategic plan mention 'special educational needs', but do not define the concept or explain which learners are considered to

¹⁰⁷ MINECOFIN 'Economic Development and Poverty Reduction Strategy 2, p. 80' available at <http://www.minecofin.gov.rw>, (accessed on 30 June 2013).

¹⁰⁸ n 107 above.

have special educational needs.¹⁰⁹ Also, the Special Needs Education Policy mentions the concept of inclusive education but the policy fails to explain clearly the concept. Thus, the lack of clear definitions of the concepts used in the policy constitutes a challenge to the interpretation of policies. The policy would have been defined the concept of inclusive education by referring to the UNESCO definition. This UN body defines inclusive education as an approach which is ‘concerned with providing appropriate responses to the broad spectrum of learning needs in formal and non-formal educational settings.’¹¹⁰

Rather than being a marginal issue on how some learners can be integrated in mainstream education, inclusive education is an approach that looks into how to transform education systems and other learning environments in order to respond to the diversity of learners. It aims towards enabling teachers and learners both to feel comfortable with diversity and to see it as a challenge and enrichment of the learning environment, rather than a problem. Inclusion emphasizes providing opportunities for equal participation of persons with disabilities (physical, social and/or emotional) whenever possible into general education, but leaves open the possibility of personal choice and options for special assistance and facilities for those who need it.¹¹¹

In addition to unclear definitions of some concepts used, Rwandan laws and policies dealing with the education of children with disabilities are widely worded. They seem to have prioritised adults with disabilities over children in the provision of education. This is indicated by the lack of a specific policy and strategic plan regarding the implementation of the right to education of children with disabilities.

Moreover, some of the existing laws and policies are discriminatory. They include some provisions that segregate children with disabilities and prevent them from attending mainstream schools. These laws and policies provides for special schooling by creating special schools for children with disabilities rather than promoting the mainstreaming school. Currently, some of the Rwandan children attend the three existing special schools in *Gatagara, Butare* and *Nyamirambo*.¹¹²

¹⁰⁹ The Special Needs Education Policy subsequently provided clarity. It specifies that ‘children with disabilities’ are those with physical, hearing, visual and intellectual impairments. It considers disabled learners to be part of the group of learners with special educational needs, along with children with HIV/AIDS and other chronic illnesses; those traumatized by the genocide, abuse or family conflict; those with social and emotional problems or speech/communication difficulties; ‘slow learners’ and ‘under achievers’; and children who are gifted or talented. The Policy anticipates further groups will be added in future.

¹¹⁰ UNESCO, *Guidelines for inclusion: ensuring education for all 15*.

¹¹¹ n 110 above.

¹¹² MINEDUC ‘Education Sector Policy’ (2003)¹³ available at <http://www.mineduc.gov.rw>, (accessed on 12 June 2013).

Another critique which can be formulated against Rwandan policy relating to education of children with disabilities is that, some policies have their specific strategic plan but others do not have it. The example is the Special Needs Education Policy. This policy does not have its specific strategic plan. It is implemented through different strategic plan including the Education Sector Strategic Plan, the Strategic Plan for integrated Child Right, etc. This indicates the extent to which the GoR does not make a special attention to the respect, protection and fulfilment of the right to education of children with disabilities.

CHAPTER IV

GENERAL CONCLUSION

4.1. General summary

This research has sought to contribute to the debate regarding the critical issue of the right to education for children with disabilities and HIV in Rwanda. Rwanda is one of the developing countries in which children with disabilities face stigma and are excluded from school and community life. In Rwanda, many children with disabilities live hidden by their parents who consider them a curse or burden for their respective families or considered to be a punishment from God. Hence, the present study addresses this human rights issue in four chapters, with the first being an introduction of the study's focus.

The first chapter introduced the focus of the study in a brief overview including, the statement of the problem, the justification for the study, the key research questions, the literature review, the delimitation of the scope of the study, and an overview of the study.

The second chapter explored international and regional human rights law (binding and non-binding) that embody obligations in relation to the protection of the right to education for children with disabilities. Rwanda, as a State member of international community, ratified a number of international and regional treaties that create obligations thereto. In addition to treaties, Rwanda signed also various declarations in relation to the protection of the right to education for children with disabilities. From these instruments, Rwanda is internationally obliged to respect, protect and fulfil the right to education for children with disabilities. Consequently, Rwanda is obligated to enact legal, policy and institutional frameworks that facilitate the implementation of its obligations with respect to children with disabilities's right to access education.

The third chapter sought to analyse critically the Rwandan legal and policy frameworks whose enactment aims at implementing the right to education of children with disabilities. Among these frameworks, there are the Constitution of the Republic of Rwanda and various legal norms relation to education and disabilities issues in Rwanda. With regard to policy and strategies, the chapter investigated general policies on education and particular policies for special needs education. The chapter looked also at strategic plans that endeavour to implement the right to education.

By exploring the above frameworks, the chapter attempts to indicate the extent to which they align with international obligations in relation with the children with disabilities's right to access education. The chapter identified their gaps and weaknesses in relation to disability, special needs education and inclusive education. These gaps and weaknesses are discussed below and recommendations made to address them.

4.2. Recommendations

In order to respect, protect and promote the right to education for children with disabilities, this study recommends for various measures to be taken. The recommendations are based on the gaps and weakness found inside Rwandan legal policy and strategic plan frameworks related to the right to education for children with disabilities. They are also supported by the researcher's views and findings. The following are the key recommendations:

4.2.1. Enactment of regulations provided for by the Child Law

The Children Law provides for regulations (Ministerial Orders) to be made by the Ministers responsible for education and health which shall regulate issues covered under the Law.¹¹³ However until to date the regulations are not yet enacted and this has created difficulty in implementing the rights enshrined in the Law since regulations are meant to provide details on how the Children Law is to be implemented concerning the education of children with disabilities. Therefore, it is recommended for regulations to be passed for effective implementation of the Child Law in regard to the right to education for children with disabilities.

4.2.2. Repealing provisions of law contradicting the principle of inclusive education

Some provisions of law are not in favour of the children with disabilities as they are partially discriminatory.¹¹⁴ Some of these provisions focus on segregation rather than on inclusion. They establish specialised schools which aim at admitting children with disabilities only. They do not align with international standards which prohibit discrimination and segregation in school. This study urges that the amendment be made to particularly focus on inclusion of

¹¹³ Art. 54 and 55 of the child law.

¹¹⁴ Article 11 of Protection of disabled persons' law, article 10 of the organic law organising education in general and article 47 of the law on nursery, primary and secondary education.

children with disabilities in the mainstream schools rather than segregating them by establishing and promoting specialised schools (their particular schools and classes).

4.2.3. Enacting a specific policy promoting the mainstreaming schools of disabled children

As it was pointed out previously, the Special Needs Education Policy is the policy that provides for the right to education of children with disabilities. However, this Policy was not designed specifically for children with disabilities. It encompasses other different groups of vulnerable children such as orphans, street children and child heads of families. Consequently, the Policy does not deal comprehensively with children with disabilities with respect to their rights to education. The Policy sets out strategies that are not appropriate specifically for children with disabilities. Therefore, this research recommends the GoR to elaborate a specific policy for the promotion and fulfilment of the right to education of child with disabilities. This policy should contain comprehensive strategies that are appropriate for children with disabilities in order to promote inclusive education in Rwanda and to reach education for all.

4.2.4. Amending the Vision 2020

As it was discussed previously, Vision 2020 highlights the GoR's commitment to reach 'Universal Education for All' as one of the most important Millennium Development Goals. However, the Vision does not pay a particular attention on the education of the children with disabilities. It makes special emphasis on vocational and technical training of young and women only in the field of technology engineering and management.¹¹⁵ Accordingly, this study recommends that the amendment be made to include specific strategies that facilitate the GoR to comply with international standards with regards the right to education of the children with disabilities and to reach to education to all by 2015.

¹¹⁵ The Rwandan Vision 2020, p. 13.

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