

**AN EXAMINATION FOR THE LEGAL SAFEGUARDS ON THE RIGHT TO
EDUCATION FOR INDIVIDUALS WITH PHYSICAL DISABILITIES IN
MAINLAND TANZANIA: COMPARATIVE ANALYSIS WITH KENYA.**

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**A DISSERTATION SUBMITTED FOR THE PARTIAL FULFILLMENT
OF THE REQUIREMENTS FOR THE AWARDS OF THE DEGREE OF
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CERTIFICATION

I, the undersigned certify that I have read and hereby recommend for acceptance by the Open University of Tanzania, a dissertation entitled: **“An Examination of the Legal Safeguards for the Right to Education on individuals with Physical Disabilities in Mainland Tanzania: In a Comparative Analysis with Kenya”** on the Partial fulfillment of the Requirement for the Degree of Masters of Laws of the Open University of Tanzania

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Date

DECLARATION

I, ANALYSE D. KAIKA do hereby declare that, this research is my own original work to the best of my knowledge and that it has been submitted to The Open University of Tanzania in partial fulfillment for the award of Master of Law (LL.M) Degree. The dissertation has not been presented nor shall it be presented for any other award in any University or Institution of Higher Learning.

.....

Signature

.....

Date

DEDICATION

This thesis is dedicated to my lovely Daughters' Filomena, Joyce and Mercy.

ACKNOWLEDGEMENT

I am profoundly grateful to Almighty God for His unwavering protection and for granting me good health throughout my life and especially during the process of conducting and compiling this research.

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LIST OF STATUTES

a) Tanzania

The Basic Rights and Duties Enforcements Act, 1994 (Cap. 3, R.E 2019)

The Constitution of the United Republic of Tanzania of 1977(Cap. 2, R.E 2008)

The Education and Training Policy (ETP) (2014)

The Education Act G.N, No.30 of 1979.

The Education Act of 1969

The Tanzania Institutes of Education Act (Cap. 142 of 2002)

The Law of the Child Act, No.21 of 2009

The National Education Act No.25 of 1978, amended in 2005.

The National Policy on Disability of 2004

The Persons with Disabilities Act No.10 of 2010

b) In Kenya

The Basic Education Act, No. 14 of 2013,

The Children Act No.08 of 2001

The Constitution of Kenya, 2010

The National Disability Policy of 2006

The Persons with Disabilities Act No. 14 of 2003.

The Republic of Kenya, National Special Needs Education Policy Framework 2009

LIST OF ACRONYMS AND ABBRIVIATIONS

ACHPR	African Charter on Human and People's Rights
ADA	American with Disabilities Act
ACRWC	African Committee on the Rights and Welfare of the Child
AFCPR	African Charter on People's Rights
CADE	Convention against Discrimination in Education
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CERD	Convention on the Elimination of All Forms of Racial Discrimination
CHRAGG	Commission for Human Rights and Good Governance
CRC	Convention on the Rights of the Child
CRPD	Convention on the Rights of Persons with Disabilities
CRWC	Convention on the Rights and Welfare of the Child
EAC	East African Community
EFA	Education for All
ETP	Education Training Policy
GPE	Global Partnership for Education
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
KISE	Kenya Institute for Special Education
KNCHR	Kenya National Commission for Human Rights
MoEVT	Ministry of Education and Vocational Training

MDGs	Millennium Development Goals
NGO's	Non-Governmental Organizations
PWD's	Persons with Disabilities
UDHR	Universal Declaration of Human Rights
UNICEF	United Nations International Children's Emergency Fund
UNESCO	United Nations Educational, Scientific and Cultural Organization
WHO	World Health Organization

LIST OF INTERNATIONAL INSTRUMENTS

The Darker Framework of Action (UNESCO 2000)

International Covenant on Civil and Political Rights, (ICCPR) 1976

International Covenant on Economic, Social and Cultural Rights, (ICESCR) 1966

The Convention on the Elimination of Discrimination in Education (CEDAW)

The Universal Declaration on Human Rights, UDHR 1948

The UNESCO Convention against Discrimination in Education (1960)

The Convention on the Rights of the Child (CRC)

The Convention on the Rights and welfare of the Child (CRWC)

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

International Convention on the Elimination of all Forms of
Racial Discrimination, 1965

The Charter of the United Nations, 1945

The International Covenant on Civil and Political Rights, 1966

The Protocol to the African Charter on Human and Peoples' Rights.

The Rome Statute of the International Criminal Court, 1998

The World Conference on Education for All, 1990 (Jomtien England)

The Salamanca World Conference on Special Education in 1994

REGIONAL INSTRUMENTS

The African Charter on Human and Peoples Rights (ACHPR) 1981.

The African Youth Charter 2004 (Agenda 2063: The Africa we want).

The African Charter on the Rights and Welfare of the Child (ACRWC) 1990

ABSTRACT

This study investigates the legal safeguards on the right to education for individuals with Physical Disabilities in Tanzania Mainland, aiming to identify gaps, challenges, and improvement areas through exploring the best practices at International standards. Generally, the main methodology employed is doctrinal and Comparative methods where by the legal text are referred from Tanzania with Kenya Policy and Legislations to identify their similarities and differences through Primary and Secondary data.

This research argues that, despite Tanzania's being a member state of the United Nations and ratification of major International Conventions and Treaties that establish the right to education for individuals with disabilities, still its domestic framework lacks protection for the right to education for disabled individuals, particularly physical impairment. Notably, despite of the absence of a binding policy that supports inclusive education strategies, Also the Country's Constitution does not explicitly mention this right or incorporate it into human rights provisions, making it difficult to enforce it in court. Instead, it is provided under fundamental Objectives and Directives of the State Policy. The study suggests that, Tanzania should incorporate with standards from article 24 of the UNCRPD, 2006 as well as article 13 the International Covenant on Social, Economic and Cultural Rights (ICESCR) of 1966 into its Constitution.

Key words: *Legal Safeguards, Right to education, Physical disabilities, Tanzania main land*

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CHAPTER ONE

GENERAL INTRODUCTION

1.0 Introduction

Disability is one of the least visible but most potent factors in educational marginalization. However, in recent years the necessity of defending the rights of people with disabilities, particularly their rights of education towards inclusion has frequently been spearhead for both nationally and internationally. Hence, individuals with physical disabilities are also recognized as rights-holders who are entitled to equal opportunities including education without discrimination.¹ Therefore, two major International frameworks related to disability inclusive education in most of Sub Saharan African states including Tanzania are signatories and ratified the same.²

Yet, despite these relative International commitments, at the national level very few states guarantee the right to education for All (EAF) in their national Constitutions. As a result globally it is estimated that, millions of students with physical disabilities today are denied their basic right to education due to explicit laws and policies of exclusion and discrimination.³ Mainland Tanzania has no exception to these challenges, despite of tremendous government initiatives to safeguard the right to education towards

¹The Conventions on the Rights of the Child (CRC) of 1989 see also the United Nations Convention on the Rights of Persons with Disabilities (CRPD), 2006.

² Article 24 of The Convention on the Rights of Persons with Disabilities (2006), read also Article 13 of the International Covenant on Economic, Social and Cultural Rights (1966).

³Encompass LLC, et al, Are we fulfilling our Promise?: Inclusive Education in Sub Saharan Africa Data and evidence for Education Programs(deep) Project Report, Us agency for International, USA, 2020, Available at: [links.org/sites/default/files/media/file/DEEP_Inclusive%20Education%20Literature%20Review.pdf](https://www.education-essed.org/sites/default/files/media/file/DEEP_Inclusive%20Education%20Literature%20Review.pdf), acc<https://www.education-essed.org> on February, 2024.

this demography. Significant challenges persist in implementation and enforcing of such legal frameworks as related to providing a reasonable accommodation of these individuals' within general education system.⁴

Consequently, the implementation on the right to education for people with physical disabilities in Tanzania has raised concerns from academics scholars for decades: means the right is non-justifiable and cannot be enforced in court of law due to its non-basic rights and duties under the Constitution rather of being enshrined under the fundamental Objectives and Directive Principals of the State Policy.⁵ Thus, Tanzania lacks specific provisions under the Constitutional to ensure the right to education for persons with disabilities, particularly physical impairment. Therefore, due to its potential effects has influenced the researcher on this topic. Perhaps, these challenges has been the barriers for people with physical impairment when it comes reaching education for all as was initiated in the World Declaration on Education for All (EFA) aimed at "Meeting Basic Learning Needs."⁶ Issues include inadequate infrastructure, limited resources, and a shortage of assistive devices, which hinder the right to education and hinder the country's current education and training demands.⁷

⁴ Article 24 of the United Nations Convention on the Rights of Persons with Disabilities (CRPD) of 2006, See also The Salamanca Statement on Principles, Policy and Practice in Special Needs Education and a Framework for Action of 1994 and the UN Convention on the Rights of the Child of 1989.

⁵ Article 7- (2) and 11-(2), (3) of The Constitution of the United Republic of Tanzania of 1977 (Cap. 2 R.E 2008)

⁶ Article (1) of the World Declaration on Education for All, Jomtien, Thailand (1990), see also, Hasan, A et al., Disability and the Right to Education for all, Education for Global Development, 2017, available at <https://blogs.worldbank.org/en/education/disability-and-right-education-all>.

⁷ United Republic of Tanzania: National Human Rights Action Plan, 2013-2017, (2021), Ministry of Constitutional And Legal Affairs, Dar es Salaam Tanzania, 2021, See also The Policy Forum, the Education We Want: A Critical Analysis of the Education and Training Policy (ETP) 2014, Issues and Recommendations, Haki Elimu, Da es Salaam Tanzania, 2022.

1.1 Background of the Study

This historical background traces Tanzania's Legal Framework on education rights for individuals with Physical Disabilities, highlighting progress and ongoing challenges. However, Tanzania is among of Sub-Saharan African Country, has committed to ensuring equal access and inclusion in education particularly for learners with physically disabilities, and ensuring their enrollment until completion, as part of the CRPD ratification process.⁸ The Convention on the Rights of Persons with Disabilities (CRPD) is an International treaty adopted in 2006 ratified by 185 Countries and its Optional Protocol in which accessibility is a principal goal. It further acknowledges disability both as a social welfare concern and a human rights issue as well as a human right, promoting inclusive education without discrimination. The convention further, provides a framework mandating member states to prioritize a disability-inclusive education environment particular for individuals with physical disabilities.⁹ Therefore, Tanzania has enacted the Persons with Disabilities Act of 2010 in recognition of International Agreements.

Historically, by the 15th Century disability in Europe was celebrated for its inherent human rights violations with physical disabled individuals marginalized and denied equal participation opportunities including access to public education; they were placed

⁸ Article 24 of the United Nations Convention on the Rights of Persons with Disabilities (CRPD) of 2006

⁹ Article 9 Convention on the Rights of Persons with Disabilities (CRPD), 2006. See also the United Republic of Tanzania: National Human Rights Action Plan 2013-2017, Ministry of Constitutional and Legal Affairs, 2013.

in special schools and residential institutions, mainly focusing on vocational skills.¹⁰ In the late 1950s, normalization in Scandinavian Countries began. The US Congress passed numerous laws supporting disability Rights, which was including in the case of *Brown v. Board of Education*, the 1973 Rehabilitation Act, and the 1990 Americans with Disabilities Act (ADA) recognizing the rights of people with disabilities and prohibiting discrimination in public life.¹¹

Further, the Education for All Handicapped Children Act of 1975, the UK Warnock Report of 1978, and the 1981 Education Act abolished disability categories and introduced "Special Educational Needs," establishing the foundation for International Action, Therefore, the first International instrument to recognize the right to education in general and promoting inclusive education globally was the Universal Declaration of Human Rights (UDHR) "stating that "Everyone has the right to education" and "education shall be free, at least in the elementary and fundamental stage" it has termed education as a fundamental human right.¹²

The subsequent treaties secures that Every person's right to education including UNESCO Convention against Discrimination in Education (1960) as the first legally binding International instrument, prohibiting discrimination and promoting equality of educational opportunities, thus laying the foundation for the right to education.¹³ Other

¹⁰ UNICEF Report of 2012, Available at, <https://www.right-to-education.org/issue-page/marginalised-groups/persons-disabilities> accessed on 13 March 2024

¹¹ UNICEF Report of 2012, Available at, <https://www.right-to-education.org/issue-page/marginalised-groups/persons-disabilities> accessed on 13 March 2024.

¹² Article 26-(1) of the Universal Declaration of Human Rights (UDHR), 1948

¹³ The UNESCO Convention Against Discrimination in Education (1960), see also United

international human rights protecting the right to education includes: the World Declaration on Education for All (1990), the 1976 International Covenant on Civil and Political Rights (ICCPR) 1976, International Covenant on Economic, Social and Cultural Rights (ICESCR), African (Banjul) Charter on Human and People' Rights (Banjul Charter). Besides that, special needs agenda become a major part of the world movement and by 1994 World Conference at Salamanca in Paris led to the Salamanca Statement and Framework for Action with the aims to provide basic education to all children.¹⁴ Regardless of disabilities, however Tanzanian government has also ratified the Salamanca Statement in 1994, emphasizing the uniqueness of every child. Globally, it is estimated that 93-150 million children with disabilities under 14 are affected, with one billion people experiencing some form of disability.¹⁵ Plan International Reports that, children are 10 times less likely to attend school and 90% of them do not fully attend. The Global Partnership for Education estimates that 90% of children with disabilities in low and lower-middle income countries do not attend school.¹⁶ Also Children with disabilities face low initial enrollment rates, early dropout rates and reduced access to secondary education and due to government's lack of prioritization,

Republic of Tanzania: National Human Rights Action Plan, 2013-2017,
Ministry of Constitutional and Legal Affairs, Dar es Salaam, Tanzania, 2013.

¹⁴ UNESCO The Salamanca Statement and Framework for Action on Special Needs Education, World Conference on Special Needs Education: access and quality Salamanca, Spain, 7-10 June 1994, ed-94/was/18

¹⁵ The Global Status Report of 2016

¹⁶ GCE, Equal Right, Equal Opportunity Report, 2014

inadequate school infrastructure, and limited accessible materials, affecting their right to education.¹⁷

Generally, Disabilities in sub-Saharan African Countries increase the likelihood of never attending school and higher dropout rates, as those with disabilities face 15 times more difficulty in accessing and affording transportation compared to those without disabilities.¹⁸ In Africa, 6.4% of Children with disabilities are 10 times less likely to attend school, and 90% of those who enroll do not complete their education. Today, 65 million Primary and Secondary school-age children have disabilities, with nearly half out of school.¹⁹ The ongoing barriers to education faced by many people with physical disabilities include lack of accessibility, discrimination, prejudice, and exclusion from mainstream schools, resulting in physical inaccessibility, unsuitable learning materials, and exclusion from mainstream education.²⁰

Consequently, Tanzania, like many African societies, grapples with education barriers for individuals with physical disabilities due to negative taboos and lack of legal frameworks, while indigenous groups prioritize inclusion, reinforcing stigma and

¹⁷ Dunn, M et al, Are we fulfilling our Promises?, Inclusive Education in Sub-Saharan Africa data and evidence for Education Programs (deep) Project Report, US Agency for International Development (USAID), 2020.

¹⁸ World Health Organization Report of 2023 available at <https://www.who.int/news-room/fact-sheets/detail/disability-and-health>, accessed on 13 March 2024

¹⁹ The World Bank and USAID , Disability-Inclusive Education in Africa Program Report, 2017,

²⁰ <https://www.right-to-education.org/issue-page/marginalised-groups/persons-disabilities>. accessed on 13 March 2024

discrimination, hindering access to education and other basic rights.²¹ Additionally, Tanzania practiced traditional education with the philosophy to maintain and preserve the cultural heritage with Islam and Christianity playing significant roles in promoting education. Missionaries aimed to enable converts to read religious literature.²²

However, the German rule in Tanganyika from (1890 – 1961) promoted education for meeting colonial needs and interests.²³ Therefore, immediately after the Second World War the British took over its administration, on behalf of the then League of Nations were often restricted to physically fit individuals, with no protections for those with disabilities, lacking with no law or policy resulting in limited access to education under the Education Ordinance.²⁴ Generally Tanganyika's efforts to address special needs education began after its Independence in 1961, although they were fragmented and lacked a comprehensive legal framework, Since the Education Act by then replaced the Ordinance, aiming to eliminate majority illiteracy and exclude physical disabilities from the curriculum.²⁵ Prior to the Persons with Disabilities Act of 1982, the government enacted the Education Act, No. 25 of 1978.

Notably, the education sector reforms in Tanzania began with Education and Training Policy (ETP) of 1995, aimed to promote access to education for disadvantaged groups

²¹ Kambuga, Y., et al. (2023), Empowering Special Minds: A systematic Review of Government Support for Students with Disabilities in Tanzania, Dar as Salaam, Tanzania. Retrieved from <http://doi.org/10.33650/ijess.v2i2.7259> (<http://doi.org/10.33650/ijess.v2i2.7259>).

²² Manyi, C. B. (2023). *Intervention Services for People with Disabilities in Tanzania (1961-2022): What lessons do we learn?* Papers in Education and Development – Special Issue on Inclusive & Special Education, the Open University of Tanzania, African Journals Online (AJOL), 2023. Retrieved from [file:///C:/Users/USER/Downloads/ajol-file_journals_668].

²³ Ibid, Fn. No. 20.

²⁴ The Education Ordinance , (Cap. 279 of 1927)

²⁵ The Education Act, No.50 of 1969

especially for Disabled individuals, but its general statement on "every child has a right to proper primary education as a human right" significant shift towards inclusive education in Tanzania following the government's decision to integrate disabled children into regular schools and provide them equal access to education.²⁶

Obviously, the 1995 Policy did not meet current education demands.²⁷ However, The Government of Tanzania in 2014 formulated and adopted the Education and Training Policy (ETP) as a predecessor of the ETP of 1995, aiming to guide education provision from pre-primary to tertiary levels along with vocational, non-formal, and special education sectors.²⁸ Although Since its adoption for implementation, there has been a concern among education stakeholders that it does not meet the current demands of education and training in the country required to strengthen economic, social, scientific, and technological transformation. Besides, the Policy has been criticized for its inability to address challenges related to access to educational opportunities and quality of education and training in the country.²⁹

In the same line the 2004 National Policy on Disability was enacted in Tanzania with the purpose of protecting persons with all types of disabilities, though the policy fails to explicitly address inclusive education, resulting in individuals with physical disabilities

²⁶ United Republic of Tanzania, Education and Training Policy Ministry of Education and Culture, Dar as Salaam, Tanzania, 1995.

²⁷ United Republic of Tanzania, Education and Training Policy Ministry of Education and Culture, Dar as Salaam, Tanzania, 1995.

²⁸ Haki Elimu, The Education We Want: A Critical Analysis of the Education and Training Policy (ETP), 2014, Issues, and Recommendations last up to date 2022, Read also, <https://team-tanzania.wixsite.com/education/about1>, accessed on April 2024.

²⁹ Ibid.

not being catered for in learning institutions.³⁰ A significant step in enhancing access to education, especially for the most vulnerable populations was by 2014 in which Tanzania launched a fee-free education policy for pre-primary and primary education.³¹ Further, a key policy framework in inclusive education is the National Strategy for Inclusive Education 2018-2021. This strategy prioritizes several vulnerable groups, including those with physical disabilities.³² Although the strategy lacks Legislation to implement. Conclusively, all persons with disabilities have the right to full and equal enjoyment of all human rights and fundamental freedoms that the international human rights legal framework lays out. Despite this legal guarantee in inclusive education in the country the situation on the ground remains precarious.³³ The Draft Constitution, set to be adopted in 2015, acknowledges the rights of vulnerable groups, including those with special needs, in human rights provisions like education and non-discrimination. However, these provisions are not yet enforceable in law. To realize these rights, the government must ratify and implement the new Constitution, translating its provisions into actionable policies, laws, and programs.³⁴

1.2 Statement of the Problem

Despite Mainland Tanzania's commitment to universal access to education, individuals with physical disabilities face significant barriers in realizing their right to education.

³⁰Ministry of Education and Vocational Training,(2009), National Strategy on Inclusive Education 2009-2017 Final Draft

³¹ UNESCO and Global Partnership for Education Report on Tanzania, 2020

³² Ibid.

³³Edwin O. Abuya and Another., (2021), Access to University Education by Learners with Physical Disabilities: Combating the Barriers, 27 BUFFALO HUMAN RIGHTS , REV. 1, Available at: <https://digitalcommons.law.buffalo.edu/bhrlr/vol27/iss1/1> accessed on 13 March 2024

³⁴ Article 49-(1) of the Proposed Draft Constitution of the United Republic of Tanzania (2014)

The Tanzania has ratified International treaties, including the United Nations Conventions on the Rights of the Child (CRC) of 1989 as well as the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD), and has also enacted National laws and Policies aimed at promoting inclusive education. However, the extent to which these legal frameworks provide effective safeguards for individuals with physical disabilities remains questionable. Persistent challenges include inadequate implementation of policies, lack of disability-friendly infrastructure, limited access to learning materials, and insufficient teacher training on inclusive education practices.

Additionally, the lack of clear legal mandates and comprehensive enforcement mechanisms often results in limited accountability for institutions that fail to meet accessibility standards. These systemic issues continue to hinder equitable educational access, undermining both the legal commitment to inclusive education and Tanzania's broader socio-economic goals. Therefore, there is a critical need to examine the adequacy of Tanzania's legal frameworks, Policies, and Institutional mechanisms in protecting and promoting the right to education for individuals with physical disabilities. This study aims to assess these legal safeguards and identify potential areas for reform to ensure a genuinely inclusive education system that aligns with both Regional and International standards

The increasing population, now at 61,741,120 persons, with a rise in the percentage of people with disabilities from 9.3 percent in 2012 to 11.2 percent in 2022, emphasizes the

urgency of addressing their needs and rights.³⁵ As the population grows, there is a greater imperative to implement policies promoting accessibility and equal opportunities for individuals with disabilities, highlighting the ongoing importance of disability inclusion efforts in Tanzania's developmental agendas. Consequently, Tanzania for signatory underscores a state commitment to “ensure equal access and the full realization of their fundamental right to education for persons with disabilities including those with physical impairment. This commitment is based on removing barriers hindering educational rights realization, especially for those with physical impairments, in which is termed as a litmus test for the government’s adherence to the international legal framework protecting fundamental human rights.”³⁶

1.2 Objectives of the Study

This study is guided by general and specific objectives:

1.2.1 General Objective.

This study was to assess the legal safeguards for ensuring access to the right to education for individuals with physical disabilities in Mainland Tanzania.:

³⁵United Nations Women Tanzania Presentation Report of 2023.see also The 2022 National and Population Census statistics records,

³⁶Vienna Conventions on the laws of Treaties, Also see Implementing Inclusive Education to meet the Educational Needs of Persons with Disabilities” (2015) at the International Conference “From Exclusion to Empowerment: Role of ICTs for Persons with Disabilities” 2014, New Delhi, India). United Nations Educational, Scientific and Cultural Organization- UNESCO,

1.2.2 Specific Objectives

By delving into Tanzania's legal system, this study seeks to shed light to which extent do current domestic law protects individuals with physical disabilities in inclusive education, this study responds to four specific objectives namely:

1. To explore best practices under international standards in ensuring the right to education for individuals with physical disabilities, with a review of relevant legal frameworks in Mainland Tanzania.
2. To examine Legislative developments on the right to education for persons with physical disabilities in Kenya.
3. To compare Tanzania's current legal framework on the right to education for individuals with physical disabilities with that of Kenya.
4. To identify existing legal gaps in the frameworks governing the right to education for individuals with physical disabilities in Tanzania.
5. To propose evidence-based recommendations for strengthening the right to education for individuals with physical disabilities.

1.3 Research Questions

1. What are the best practices under international standards for ensuring the right to education for individuals with physical disabilities, and how do these compare with the legal frameworks in Mainland Tanzania?
2. How has Kenya developed its legislation to safeguard the right to education for individuals with physical disabilities, and what lessons can Tanzania learn from this?

1. What legal gaps exist in Tanzania's current frameworks governing the right to education for individuals with physical disabilities?

1.4 Significances and Justification of the Study

Education is not only a fundamental human right but also a gateway to realizing other rights and socio-economic opportunities. This study is therefore crucial for promoting equal access to education and enhancing inclusivity for all individuals, particularly those with physical disabilities. The researcher aims to propose a comprehensive legal framework that aligns with international standards, to which Tanzania is a signatory through various conventions and treaties. These include obligations to ensure that individuals with physical impairments receive the support necessary to meet their basic educational needs within formal learning systems.

Given the persistent barriers to inclusive education, the study also aims to raise awareness among policymakers and legislators. It seeks to influence reforms that may lead to the development of new policies for learning institutions or constitutional amendments—particularly by enshrining the right to education within the Bill of Rights to enhance its enforceability in courts of law.

1.5 Literature Review

During this study a comprehensive review of existing literature, including academic articles, reports, policy documents, and legal journals related to physical disability right to education was examined to guide a researcher in identifying gaps and areas for further

investigation. To this regard, the literature reviewed below is merely indicative and not exhaustive.

Stephen, study provides valuable insights into the support mechanisms for learners with physical disabilities in Tanzania, highlighting the efforts made to accommodate their educational needs. However, the study falls short in addressing the specific challenges these learners face. The broad categorization of disabilities by the Moet further complicates the provision of targeted support. Future research should focus on identifying and addressing the unique challenges faced by learners with physical disabilities to provide a more comprehensive understanding of their educational experiences and needs.³⁷

Kantar's study revealed the widespread educational exclusion of millions of children with disabilities worldwide. Despite international mandates and national policies, these children are often denied their fundamental right to education due to systemic barriers. These barriers include explicit laws and policies that exclude or segregate students with disabilities, institutionalizing discrimination and making it difficult for disabled children to access mainstream educational settings. Physical and logistical obstacles, such as lack of accessible transportation and inaccessibility of school buildings, classrooms, and

³⁷ Thompson, S. Education for Children with Disabilities K4D-Knowledge, Evidence and Learning for Development, Institutes of Development Studies, Help Desk, 2017, available at, <https://rodra.co.za/images/countries/tanzania/research/Education%20for%20children%20with%20disabilities%20in%20Tanzania%202017.pdf>, accessed on Mach 2024.

learning materials, also impede access to education.³⁸ Kantar's analysis extends to international legal frameworks, particularly article 24 of the Convention on the Rights of Persons with Disabilities (CRPD). Despite these guidelines, significant challenges remain in their implementation. Addressing these barriers is essential for this research which intends to explore how legally individuals with physical disabilities full realize their right to education in Tanzania mainland.

The World Bank Education Report in collaboration with the Global Partnership for Education (GPE) has highlighted the educational disparities faced by children with disabilities in developing Countries. The report, titled "Disability Gaps in Educational Attainment and Literacy," reveals alarming statistics about primary school completion rates and literacy rates. In 19 developing countries Tanzania in inclusion, only 48% of disabled children complete primary school, and up to 30% have never attended school. Literacy rates and secondary school Completions are also significantly lower than non-disabled peers. The report attributes these gaps to the exclusion associated with disabilities, with key barriers contributing to this exclusion being inadequate facilities. The report underscores the urgent need for targeted interventions to address these gaps, highlighting the urgent need for inclusive education initiatives.³⁹ This report is more

³⁸ Kanter's A, Right to Inclusive Education for Students with Disabilities, under International Human Rights Law, Cambridge University Press, 2018, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3116806, last up to date 2021, accessed on March 2024.

³⁹ World Bank Education Report, Disability Gaps in Educational Attainment and Literacy, 2017, Available at, <https://www.worldbank.org/en/news/press-release/2017/12/01/children-with-disabilities-are-being-left-behind>, Global Partnership for Education, Press Release No: 2018/080/education.

useful to this study though the researcher will focus on legal safeguard on individuals with physical disability in Tanzania mainland.

The study by Inertia Bose, evaluates the effectiveness of inclusive education systems in improving school attendance for children with disabilities in low-income countries, specifically Uganda. The researchers used a difference-in-difference methodology to assess the impact of inclusive education laws.⁴⁰ They found that post-legislation, children with visual, hearing, and physical disabilities in Uganda were more likely to attend school compared to their peers in other Sub-Saharan African countries without similar legislation. However, this trend did not extend to severe disabilities. The study emphasizes the need for comparative data from other countries.⁴¹ However, this study is usefully to the researcher hence has emphasized on comparative legal research methodology in order to understand to what extent has Kenya. Domestically successfully in implementing the inclusive education towards individuals with physical disabilities on international standards, Notably the researcher prefers to apply comparative legal method between Tanzania and Kenya in exploring legal safe guard on the right to education for individuals with physical impairment.

⁴⁰ Inertia Bose et al, (2020), Do Inclusive Education Laws improve Primary Schooling among Children with Disabilities, Volume 77, International Journal of Educational Development, 2020, ISSN 0738-0593, available at, <https://doi.org/10.1016/j.ijedudev.2020.102208>
(<https://www.sciencedirect.com/science/article/pii/S0738059320303679>)

⁴¹ Inertia Bose et al, (2020), Do Inclusive Education Laws improve Primary Schooling among Children with Disabilities, Volume 77, International Journal of Educational Development, 2020, ISSN 0738-0593, available at, <https://doi.org/10.1016/j.ijedudev.2020.102208>
(<https://www.sciencedirect.com/science/article/pii/S0738059320303679>)

According to UNICEF Report analyzes the situational analysis of children with disabilities in Tanzania, focusing on current laws, policies, and programs. The report identifies critical issues and gaps, highlighting the government's efforts in inclusive and equitable education. Despite Tanzania's ratification of the CRPDs and the Persons with Disabilities Act, the report reveals poor alignment of national laws with regional and international human rights commitments. The constitution guarantees everyone's access to fundamental liberties, but it does not specifically mention individuals with impairments.⁴² The rights of people with impairments are not included in the bills of rights as fundamental rights, making them legally enforceable or legitimate. The report also highlights barriers such as distance and inaccessibility, indicating that children and younger individuals with disabilities may not receive the quality education they deserve. The report advances the understanding of how people with physical disabilities can realize the right to education through appropriate legal protection and enforcement before the court of law.⁴³ **Violet's** study arguing that, Tanzania's government's efforts to improve access to basic education and assistive devices for children with physical disabilities have not adequately addressed their unique needs. Factors hindering the provision of quality education and affordable assistive devices include attitudinal and physical barriers, expensive materials, and a lack of understanding of disability issues among teachers and policymakers. Parents are also reluctant to enroll their children in

⁴²UNICEF Report, Situation Analysis of Children and Younger Persons with Disabilities in Mainland Tanzania and Zanzibar, 2021, available at [Children and Young people with Disabilities, a Situation Analysis.pdf](#), accessed on March 2024.

⁴³ UNICEF Report, Situation Analysis of Children and Younger Persons with Disabilities in Mainland Tanzania and Zanzibar, 2021, available at [Children and Young people with Disabilities, a Situation Analysis.pdf](#), accessed on March 2024.

schools, leading to many children with disabilities not being identified and enrolled. Society's insensitivity to disability issues contributes to the lack of recognition and inclusion for children with disabilities.⁴⁴ The author has neglected to address legal barriers faced by children with physical disabilities in mainstream inclusion education, instead focusing on social and physical challenges.

Worthy Advocacy discusses the right to education for Learners with Disabilities (LWDs), focusing on Kenya as a case study. It emphasizes the importance of implementing this right in universities, as it is crucial for individual education. Students with physical disabilities have the Right to quality education, reasonable accommodations, inclusive instruction, non-discrimination; individualized education plans (IEPs), accessible communication, physical safety, and full participation in extracurricular activities. Schools must ensure facilities, resources, and instructional materials are accessible, and provide reasonable accommodations. Inclusive instruction, non-discrimination, and effective communication are also essential for their Participation in classroom discussions and activities.⁴⁵ The law mandates education providers to respect and promote the right of all individuals, including LWDs, to university education.

⁴⁴ Violet, M.T, Access to Education and Assistive Devices for Children with Physical Disabilities in Tanzania, Oslo and Akers us University College of Applied Sciences, 2014.

⁴⁵ Wrthy Advocacy, Upholding the Rights of Students with Physical Disabilities in the Classroom, Every Child: Wrthy of Advocacy, Empowerment, and Support in Their Special Education Journey, Recommended by LinkedIn, 2024.

However, access to academic institutions alone is insufficient. Kenya's legal framework aligns with international norms, promoting the fundamental right to education and non-discrimination for all learners. The Constitution and the Public Debt Authority (PDA) prohibit discrimination against LWDs, ensuring their legal protection. The Universities Act guides universities to uphold national values and governance principles. The PDA provides measures to address infractions, and non-compliance is taken seriously and activities.⁴⁶ This study is essential for a researcher hence explores Kenya's alignment with international human rights instruments in protecting people with disabilities, specifically physical impairment; it has specifically identified the right to education for disabilities in its constitution in which a researcher intends to apply a comparative research method between Tanzania and Kenya on observance to International standards in protecting the education right to individuals with disabilities, particularly physical impairments.

Chataika's and Kubota's Lydia their study highlights the challenges faced by physical disabled students in accessing higher education in sub-Saharan Africa. Both of them reveals that, the lack of an adequate educational system and accessible infrastructure, particularly in buildings not designed to accommodate their needs, hinders their inclusion. This issue is common in developing countries like Tanzania, where school environments are often unsupportive. These studied emphasizes the connection between the built environment and learning barriers faced by disabled individuals, emphasizing

⁴⁶Ibid.

the need for infrastructure development to effectively include disabled students in higher education.⁴⁷

Chataika's research on inclusion highlights the limitations of infrastructure development for disabled students, as it limits their enrollment, he cements with Tanzania on the lack of accessible infrastructure, including classrooms, laboratories, libraries, washrooms, dining halls, and sports spaces, hinders the creation of a pool of qualified students.⁴⁸ This highlights the sub-Saharan African education system's inability to accommodate a significant number of disabled students, highlighting the need for improved infrastructure development and support for disabled students in developing countries.⁴⁹

Kubota study also revealed that, some of Higher Learning Institutions in Tanzania lack adequate infrastructure for accommodating students with physical disabilities, leading to unattractive facilities and limited access to necessary materials. Teachers' teaching methods were also insufficiently inclusive, and the number of students with disabilities was not proportional to the number of students. Despite this, students with disabilities received academic support and Advice. Both studies has addressed physical barriers which hinders students with physical disabilities from enjoying their education right in inclusion classes but failed to address legal challenges to this group on monograph in enforcing that right. This is what a researcher will focus on.

⁴⁷Kabuta, L. G1 et al, Problems Facing Students with Physical Disabilities in Higher Learning Institutions in Tanzania, Vol. 5, No.1, Tengeru Community Development Journal, ISSN 2665-0584(online), 2018

⁴⁸ Tsitsi Chataika at el, Access to Education in Africa: Responding to the United Nations Convention on the Rights of Persons with Disabilities, Disability & Society, 2012, 27:3, 385-398, DOI: 10.1080/09687599.2012.654989 To link to this article: <https://doi.org/10.1080/09687599.2012.654989>

⁴⁹Ibid.

Wazambi and Lugendo evaluates Tanzania's human rights situation in 2021, revealing a slight decrease in abuses of vulnerable groups' rights compared to 2020. It emphasizes the need for inclusive education for individuals with physical disabilities and evaluates the effectiveness of Tanzanian legal provisions like the Education Act and the Persons with Disabilities Act. Despite Tanzania's commitments under the Convention on the Rights of Persons with Disabilities and the Persons with Disabilities Act and the government's ongoing implementation of fee-free education policies and other measures aimed at ensuring the progressive realization of the right to education from primary to secondary levels, significant challenges remain for individuals with physical disabilities including: long distances between home and school, curriculum gaps, stigma, and discrimination. The article calls for legislative changes, better resource allocation, awareness campaigns, and capacity-building activities to promote inclusive education and address structural barriers. The Ministry of Science, Technology, and Education should improve accessibility. The study identifies attitudinal, physical barriers and a lack of understanding of disability issues among teachers and policymakers as significant impediments to providing Quality education for children with physical disabilities. However, the authors neglect to address how students with disabilities, particularly those affected by physical infrastructure in university buildings, can effectively realize their right to education. This gap will be a focus for future research.

According to Opoku et al, identifies the physical accessibility of school buildings is an important requirement to make education accessible to students with disabilities.

Nonetheless, this is often ignored as most educational facilities are constructed without considering the concerns and needs of persons with disabilities. Barriers in academic institutions that obstruct access to education for people who are physically impaired include narrow doors, inappropriate seating arrangements, rugged terrains, inaccessible toilet facilities and lack of ramps. The study concludes on the need for concerted on equal basis as other children.⁵⁰

Possi and Milinga examines Tanzania's inclusive education policy, initially drafted in 2008 and ratified in 2009, focusing on the education of people with physical impairments and suggests improvements to advance the right to education for physically impaired individuals. The policy mandates that students with disabilities be educated alongside their non-disabled peers and ensures a 1:1 student-to-book ratio for these students. However, implementation has been challenging due to insufficient funding and inadequate facilities, and unclear policy requirements, despite increased student enrollment. Additionally, many policies fail to clearly articulate the requirements for special and inclusive education. Despite various educational reforms transitioning from special to integrate to inclusive education, which have increased student enrollment, challenges persist like inadequate infrastructure and lack of specific legislation. However the system still struggles compared to other countries in effectively providing education to individuals with disabilities.⁵¹ The study emphasizes the need for

⁵⁰Opoku M.P, et al, Challenges in Accessing Education for Children with Disabilities in Ashanti and Brong Ahafo regions of Ghana, J. Disability Study, 2015, 1(2), 9-16

⁵¹Possi, M. K., & Milinga, J. R., (2017), Special and Inclusive Education in Tanzania: Reminiscing the Past, building the Future, Educational Process: International Journal, 6(4), 55-73. Available at,

infrastructure updates to align with inclusive education best practices and calls for a revision of the Education and Training Policy. It highlights gaps in legal and practical protections for persons with disabilities.

Hlengwa and Masuku, The authors highlight the Tanzanian government's efforts to facilitate education for persons with disabilities but note ongoing issues such as poor infrastructure, including inadequate dormitories, dining facilities, and toilets. They argue that, despite some progress, the system fails to meet the needs of students with physical disabilities due to a lack of specific legislation or regulation addressing special or inclusive education challenges. The study Underscores the necessity of updating current infrastructures to align with inclusive education best practices and calls on the relevant Ministry to revise the Education and Training Policy to address these needs. The author reveals that more targeted legislation and effective implementation strategies are required to overcome these barriers.⁵²

Therefore, author's arguments are relevant to this study, for his successful recognition of challenges and laws for the protection of Persons with Disabilities such as physical disabled person in attaining their right to education. Therefore, this study anchored on finding a redress by having a strong legislative framework for the protection of the right

<http://dx.doi.org/10.22521/edupij.2017.64>.

⁵²Hlengwa, et al, Experiences of Students Living with Physical Disabilities at a University of Technology in Kwa Zulu-Natal ,South Africa. Journal of Student Affairs in Africa | Volume 10(1) 2022, 93-108 | 2307-6267 | DOI: 10.24085/jsaa.v10i1.2525 93.

to education for Persons with Physical Disabilities, and offer recommendations to foster such.

1.6 Research Methodology

Research methodology is a systematic approach of solving research problems, encompassing philosophy, practice, rules, methods, and application in specific situations.⁵³ This is a Qualitative research in which doctrinal is the key method used in data collection and analysis. The study explores Tanzania's legal safeguards on the right to education for physical disabled individuals, identifying controversies and laxity through qualitative analysis of laws, policies, and regulations by which Tanzania is compared with Kenya. Often, Qualitative research means a type of social science research that collects and works with non-numerical data like interviews, observations and case studies that illustrates how the legal doctrines are applied in practice.⁵⁴ However, this study is also a combination of two methods namely:-

- a) Doctrinal legal Research and
- b) Comparative Research Method.

1.6.1 Doctrinal Legal Research Methodology

This is a traditional source of law that uncovers unknown facts and logical conclusions through a systematic study, analysis, and critical evaluation of legal doctrines, legislations, rules, concepts, policies, judiciary judgments and their inter-relationship.⁵⁵

⁵³Kothari, C.R., Research Methodology, 2nd Edition, New age International Publisher, New Delth, at pg.17-18, 1990.

⁵⁴ Research gate, available at, [https:// researchgate.net](https://researchgate.net).

⁵⁵ Chui, W. H. (Eds.), Research Methods for Law, 2nd Ed, Edinburgh University

However, this is a Library research which helped in finding out about what others scholars have written on the subject and come up with conclusion by mostly focuses on the available Secondary Legal Sources.⁵⁶

This research is a ‘Pure Theoretical Research’, which present the law as a coherent net of Principles, Rules, and exceptions with a focuses only on the current state of the law instead of seeking public opinion on how it should be.⁵⁷ Hence doctrinal research it is a cost-effective and time-efficient, as data is easily available on online websites, libraries, and legal documents. Also it provides clear and concise answers to legal problems.⁵⁸

However, some Philosophers such as, Waterman’s define legal doctrinal research as a type that primarily relies on the legal system for concepts, categories, and criteria, distinguishing it from independent theoretical frameworks.⁵⁹ Richard Posner also posits that law is a blend of logic, rhetoric, economics, and specialized vocabulary, encompassing specific texts, practices, and institutions. Further, S.R. Myneni, “views Doctrinal Research as a legal proposition or propositions by way of analyzing the existing statutory provisions and cases by applying the reasoning power.”⁶⁰ Basically

Press, (2017), pg.13

⁵⁶ Ishwara, B , Idea and Methods of Legal Research, Oxford University Press,2019, DOI: 10.1093/oso/9780199493098.001.0001.

⁵⁷ Pradeep, M. D, Legal Research Descriptive Analysis on Doctrinal Methodology,2019, International Journal of Management, Technology, and Social Sciences (IJMTS), 4(2), 95-103, DOI: <http://doi.org/10.5281/zenodo.3564954>.

⁵⁸ Ibid.

⁵⁹ Hutchinson D. N, Defining and Describing What we do: Doctrinal Legal Research, Volume 17 No. 1 Deakin Law Review,2012, available at : <https://www.researchgate.net/publication/304034393>, Doi : 10.21153/dlr2012vol17no1art70.

⁶⁰ Hutchinson D. N, Defining and Describing What we do: Doctrinal Legal Research, Volume 17 No. 1 Deakin Law Review,2012, available at : <https://www.researchgate.net/publication/304034393>, Doi : 10.21153/dlr2012vol17no1art70.

the aims and researcher questions has influenced the uses of doctrinal legal methods in combination with comparative during the study to examine the legal safeguard for education rights on individuals with physical disabilities with a focuses on three components:-

Firstly, the legal analysis of the law's history, here the legal trends of disabilities right to education will be traced from being treated *as an object to right holders*. Thus, Several Conventions on disabilities right to education will be explored and discussed starting with the Charter on Rights of children, Universal Declaration of Human Right until the United Nations Convention on the rights of disabilities. Secondly is the current state, here the researcher has examined Tanzania legal framework protecting the right to education for individuals with physical disabilities by identifies ambiguities, gaps and criticisms under the Constitutions of the United Republic of Tanzania, The Persons with Disabilities Act, The Education Act and The Child's Law. Lastly, is the potential evolution which accesses whether Tanzania mainland abide with international standards and obligations on the protection of the right to education for individuals with physical disabilities and proposes evidence based recommendations.

1.6.2 Comparative Legal Research Methodology

The study has employed a comparative method to analyze existing laws, cases, and authoritative materials in understanding the impact of legal mechanisms on the social system. The main goals was to examine whether Tanzania confirms with International standards best practice regarding the right to education for individuals with physical

disabilities in which is the party as it has signed the treaties. Further, this research design was applied to compare to Tanzania mainland domestic law with Kenya Jurisdictions legal safeguards on education rights for people with physical disabilities. This was done through identifying similarities; differences and areas of improvements being compulsory in doctrinal legal research; hence both are among of common law countries highlighting their dualist approach.

1.6.3 Data Collection Methods

Research methods were essential tools for data collection, processing, and establishing relationships between data, unknown facts and evaluating results' accuracy. From this perspective, Data is defined to mean and include all the information that the researcher collected and gathered for the study. However, during this study two types of data were applied namely: Primary and Secondary data.⁶¹ Notably, the study is theoretical in nature, examining legal concepts and principles from various sources like Legislation and Precedents. Therefore, the Basic sources of data collection in doctrinal legal research are:

- a) Participation: Here the researcher indirectly attended (Physical presence) to lecture, Seminar conference, observation of judicial, legislative and administrative proceeding or their recording in written or electronic format.

⁶¹ Duncan at el., Defining and Describing What we do: Doctrinal Legal Research, Volume 17 No. 1 Deakin Law Review, 2012, available at : <https://www.researchgate.net/publication/304034393>, Doi: 10.21153/dlr2012vol17no1art70.

b) Publications: under this source of data the researcher used Books, Journals, Magazines, and News Papers, Juristic work, Reports of (Seminar, Conferences, Symposiums, Legislative, Judicial and Administrative Proceedings), Articles, Research Papers, Thesis or Dissertations. Reports, Judgments, Case Laws, including statutes, Regulations, Legal Commentaries, Academic Journals, Treaties, online resources like websites and blogs, government and committee Reports.⁶² Therefore, in formulating different theories, Principals, and philosophy, Doctrinal and Comparative legal methods were used to collect data from various legal principals at International, Regional, and Domestic levels. In this research,

1.6.3.1 Secondary Source of Data

Data was utilized to study legal concepts and principles in various legal histories in an authorities and Non-authoritative sources such as:

- a) Encyclopedias, Books, Judicial pronouncements, Committee Reports, Digest, High Courts and Supreme Court decisions, Textbooks, Commentaries, and Periodicals.⁶³
- b) Non-authoritative sources like , Academic Journals, Articles, Reports, and Policy Documents , Government Papers, Correspondences, various speeches and scholarly levels, Reported and Unreported Cases; the internet, Governmental and non-

. Duncan at el., Defining and Describing What we do: Doctrinal Legal Research, Volume 17 No. 1 Deakin Law Review, 2012, available at : <https://www.researchgate.net/publication/304034393>,
Doi : 10.21153/dlr2012vol17no1art70

⁶³ Ibid.

Governmental records and Other documented literature also provide context and theoretical underpinnings the topic.⁶⁴

By emphasizes the importance of legal interpretation and application in these areas. The researcher made on line visits to the Open University of Tanzania, the High Court, and the Court of Appeal in Tanzania. International Institutions also like WHO, Human Rights Watch, Ministry of Education, Science and Technology, Constitution and Legal Affairs, and Ministry of Community Development have issued Policies and Regulations on educational for individuals with disabilities was accessed through web site (on line) to get necessary data for the study. This is due to the Sources of Information Technology and Mass communication to have become prominent source of data collection within Doctrinal research method.

1.6.3.2 The Primary Data

First hand data, guided a researcher to identify the study gapes and verify the findings, hence the study was to analyze legal rules from Primary Sources like Legislative Enactments, Treatises, Judicial decisions, and Customs. These data were collected through library visits, Lectures, Conferences, Seminars, Judicial proceedings, and Case Studies. The Primary Data included The Constitution of the United Republic of Tanzania, National statutes such as the Persons with Disabilities Act, The Education Act and The Law of the Child Act. Parliament Hansard, treaties and Conventions, Reports, Historical Legal Documents and Government Publications on education and disability

⁶⁴ Tylor, T.R., Methodology of Legal Research, Utrecht Law Review, Available at, file:///C:/Users/USER/Downloads/Methodology_in_Legal_Research.pdf, accessed on April 2024.

rights. The study also compares Tanzanian and Kenya legal systems on the right to education for individuals with physical disabilities.

1.6.3.3 Data Analysis Methods

Since the study is theoretical in nature examining legal concepts and principles from various sources reaching a valid conclusion using the power of reasoning following traditional legal research methods. Doctrinal legal research is a method of analyzing legal propositions through the examination of various legal materials. Therefore, a researcher based on Secondary sources which aimed to provide a logical and rational response to the research questions. It involves collecting and analysis of relevant information and data from various sources crucial for research problems such as: The extensive background reading from Textbooks, Dictionaries, Encyclopedias, Legal Articles, Treatises, Statutes, Judgments, Magazines, and Legal Journals in order to reaches a valid conclusion.

However, through library search the researcher evaluated legal sources to ensure their relevance, trustworthiness, and credibility, also synthesize of the legal concepts and principles to frame a rational understanding of the legal problem and finally ultimately reaching a conclusion. This study goal was to assess the credibility and availability of factual or philosophical information on the current legal frameworks and policies governing the right to education for individuals with physical disabilities in Mainland Tanzania, comparing it to Kenya's experiences.

Additionally, the researcher employed:

- (a) Deductive Reasoning: this involves starting with general principles and applying with general principles and applying them to specific cases to draw conclusions. Here the general principles relating to human rights and disabilities rights and then examining how these principles are applied (or not applied) in specific Tanzania laws and policies concerning education.⁶⁵

It starts with the Universal Declaration on Human Rights Principles such as right to education, no discrimination and equality opportunities. Therefore, these Principles are incorporated into International Conventions such as the UN Conventions on the Rights of Persons with Disabilities (CRPD) which establishes legal obligations to member states relating to protection of the right to education for individuals with disabilities. However specific Laws and Policies in Tanzania are analyzed and assessed on how they deviate or reflect from the General Principal.

- (b) Analytical Data Analysis : was applied to assume the current gaps in legal safeguards and policy implementation that hinder the right to education for individuals with Physical Disabilities in Mainland Tanzania, and Kenya, it will also focus on practical solutions to conflicting interests, enabling researchers to compare legal systems and explore creative work.
- (c) Functional methods: was utilized to comprehend, compare, and assess legal systems, focusing on practical problem-solving regardless of the doctoral structure of the Comparative legal systems.

⁶⁵ The law Brigade Publishers (India) available at: <https://thelawbrigade.com>, accessed on...

- (d) Finally, the historical method: is a useful for this study hence it helps researchers understand the origins and reasons behind the law, providing a comprehensive Understanding of its functioning in different societies. This method can reveal deeper similarities or differences in legal safeguards for education rights in Tanzania, offering recommendations for policy improvements, utilizing academic Journals, books, treatises, legal commentaries, and amicus briefs.

1.7 Scope and Limitations of the Study

The study focuses to finding out whether Tanzania existing legal framework pertaining to the safeguards right to education for individuals with physical disabilities aligned with international obligations and standards. Also a comparative analysis between Kenya and Tanzania is explored by examining relevant national laws, policies, regulations, and international treaties ratified by both countries. Including the Convention on the Rights of Persons with Disabilities (CRPD), will be examined to identify areas of alignment and divergence. Perhaps, the research objectives, time factor and financial barriers hindered a researcher, which influenced a pure doctrinal methodology (library based research) with comparative legal methods which limited the study processes: hence a researcher could not travel to Kenya to collect empirical data.

1.8 Conclusion

Since Learning Institutions/schools lacks particular policies or clear guidelines in place that instructs on how to admit, and provide contusive and accessible environment for students with physical disabilities. Therefore, the minister responsible has to create

policy for inclusive education to ensure learning institutions act in accordance with the legislations. Also it is recommended for law and policy makers to amend the articles of the constitutions by inserting the right to education as among of the basic human rights since Tanzania has committed to compliance under article 24 of the convention on the rights of persons with disabilities as well as the Salamanca World Conference on Special Education Needs. This will be easily for individuals with physical impairment easily enforceability of their education right before court once infringed.

CHAPTER TWO

CONCEPTUAL AND THEORETICAL FRAMEWORK

2.0 Introduction

The right to education is a fundamental human right, but it's often overlooked for individuals with physical disabilities, leading to significant disparities in access and outcomes. To ensure full realization, robust legal safeguards and comprehensive conceptual and theoretical frameworks are needed. This chapter examines conceptual and theoretical frameworks that ensure the right to education for individuals with physical disabilities by the focuses on three concepts such as: Education, disability and physical disability. However, the right to education under these concepts emerged or works under different theories, which are: Social Justice Theory, Non –discrimination, Transformative Learning Theory, Human Rights Theory and Inclusive Education Theory, will be discussed hereunder. Further, it explores the 2010 Persons with Disability Act and the Convention on the Rights of Persons with Disabilities (CRPD)

focusing on related instruments such as the Universal Declaration of Human Rights, 1948 (UDHR).

2.1 Key Concepts

This study explores the right to education for individuals with physical disabilities, focusing on inclusive education, disability, and physical disabilities. It suggests that inclusive education should begin with children with disabilities attending the same classrooms as those without disabilities.

National legislation should prevent schools from selecting students and ensure mainstream access. The principle of non-exclusion based on disability, reasonable accommodation, and access to inclusive education systems should be upheld by empowering frontline teachers and leveraging the experiences of children with disabilities

2.1.1 Education as a Concept

Education is a research-based or knowledge-transmission approach to information acquisition that focuses on helping people become responsible citizens and reach their goals. It happens outside of classrooms, mostly on campuses of elementary, secondary, and university schools, as well as other educational institutions where students are learning basic, intellectual, or professional skills. The political, social, civic, and economic advancement of a country depends on its citizens' ability to access education. However, Education is a key social and cultural right which promotes democracy, peace,

tolerance, development and economic growth. Different writers has attempted to explore the meaning education hence, there is no specific definition of the tern “education” in steady it has been defined from different respectively. For instance:

Education, according to Oxford Languages, is "the process of receiving or giving systematic instruction, especially at a school or university."⁶⁶ Additionally, The Cambridge Dictionary defines education as the process of teaching or learning, particularly at a school or college, or the information that is acquired as a result of this.

⁶⁷Wikipedia also uses terms All age groups are affected by the broad concept of education, which includes both formal (top row) and informal (bottom row) learning. Education may take many different forms and is the process of imparting information, skills, and character qualities.⁶⁸

However, The CADE provides a definition of ‘education to mean all types and levels of education, and includes access to education, the standard and quality of life.⁶⁹ Further, General Comment No. 13 of the Committee on Economic Social and Cultural Right (CESR) defines education as both a human right itself and an indispensable means of realizing other human rights.⁷⁰ The committee goes further to state that 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

⁶⁶ Oxford English Dictionary, “Community.” (3rd Ed.), Oxford University Press. 2010, <https://www.oed.com>

⁶⁷Cambridge Dictionary, Community, Cambridge Dictionary, Cambridge University Press, 2024. <https://dictionary.cambridge.org>

⁶⁸From Wikipedia, the free encyclopedia, available at, <https://en.wikipedia.org/wiki/Education>

⁶⁹Article 4 of the Convention against Discrimination in Education of 1960, (CADE).

⁷⁰General Comment No. 13 of the Committee on Economic Social and Cultural Right (CESR), 1966.

the means to participate fully in their communities.⁷¹ Notably there two types of education namely: Formal education and Informal education.

2.1.1.1 Formal Education

Formal education is a structured system that runs from primary school to university, encompassing vocational, technical, and professional training programs. It often assesses learners' acquired skills and is based on a curriculum that can be adjusted to individual needs. It typically leads to recognition and certification.⁷²

2.1.1.2 Informal Education /Non-Formal Education

Informal education is an alternative form of education that goes beyond traditional classroom settings, focusing on individual student interests and providing them with the necessary tools to reach more complex material. It involves accidental collaboration on new information and is discussion-based, bridging the gap between traditional classroom settings and life outside the classroom. Therefore, Informal education is a lifelong learning process that occurs outside traditional school settings, often unplanned and unstructured for people to improve skills and competences outside the formal curriculum. It bridges the gap between classroom learning and life outside of school.

⁷¹ Ibid.

⁷² European Youth Foundation 2023, available at, <https://www.coe.int/en/web/european-youth-foundation/definitions#:~:text=Informal%20education%20refers%20to%20a,environment%20and%20from%20daily%20experience>, read also <https://througheducation.com/everything-you-need-to-know-about-formal-education/>, accessed on April 2024.

Although social recognition increases, non-formal education achievements are often difficult to certify.⁷³

2.1.1.3 Non-formal Education

Non-formal learning is a mix of formal and informal. While it doesn't have a syllabus or curriculum and isn't necessarily taught by people who are licensed to teach, it's more structured than informal learning. Examples of non-formal learning are organizations like the Boy or Girl Scouts, non-credit adult education courses, seminars, and conferences.⁷⁴

2.1.2 The Right to Education

Education is a fundamental human right that aims to eradicate poverty, reduce inequalities, and promote sustainable development.⁷⁵ The right to education was initiated by the Universal Declaration of Human Rights, requiring compulsory free primary school education for every child, secondary education (including technical training) and equal access to higher education.⁷⁶ The Convention further mandates elementary education, which is a framework known as inclusive education, which accommodates all children, regardless of their linguistic, intellectual, social, emotional, or physical

⁷³ European Youth Foundation 2023, available at, <https://www.coe.int/en/web/european-youth-foundation/definitions#:~:text=Informal%20education%20refers%20to%20a,environment%20and%20from%20daily%20experience> accessed on 28.07.2025

⁷⁴ <https://througheducation.com/everything-you-need-to-know-about-formal-education/>

⁷⁵ <https://www.unesco.org/en/right-education>

⁷⁶ Article 26 of the Universal Declaration of Human Rights (UDHR), 1948 under Article 26 (though not having legal effect), Article 13 of the International Covenant on Economic, Social and Cultural Right, 1966, Article 28 of the United Nation Convention on the Rights of the Child, Article 18 of the African Charter on Human and Peoples Right Article 11 of the African Charter on the Rights and Welfare of the Child, and Article 24 of the Convention on Rights of People with Disabilities, 2006.

ability.⁷⁷ However, the UN Convention on the Rights of the Child and international treaties support this right.⁷⁸

Through Education as a fundamental human right that enhances life chances, reduces poverty, and promotes social inequalities. It empowers individuals, enables women, and helps them reach their full potential. Education also brings economic returns and contributes to lasting peace and sustainable development. Their world advocates for every child to have two years of free, quality pre-primary education. Governments must ensure access to education without discrimination, as this is an international legal obligation.

2.1.3. Special Education

This is termed as aided education, or alternative education, which is a pedagogical approach designed specifically for students with learning disabilities, such as physical disabilities.⁷⁹ Specialized education is a method where students with special needs spend most of their school day with regular peers. This approach is typically used for students with mild to moderate disabilities, as it requires significant curriculum changes and allows students to leave for smaller sessions or related services.⁸⁰ Inclusive education carries elements of mainstreaming, integration, normalization, least restrictive environments, deinstitutionalization, and regular education initiatives.⁸¹

⁷⁷ Article 26 of 1948 Universal Declaration of Human Rights (UDHR)

⁷⁸ <https://www.unicef.org.uk/rights-respecting-schools/the-rrsa/the-right-to-education/>

⁷⁹ From Wikipedia, the free Encyclopedia

⁸⁰ From Wikipedia, the free Encyclopedia.

⁸¹ Possi, M., & Milinga, J. R., Special and Inclusive Education in Tanzania: Reminiscing the Past, Building the Future, Educational Process: International Journal, Vol 6 (4), 55-73, 2017, <http://dx.doi.org/10.22521/edupij.2017.64>

2.1.4 Segregation Education

Segregation is among of special education which involves students with special needs being separated from other students in separate classrooms. Under this model, segregated students may attend the same school as ordinary students but spend the entire day in a special classroom. Alternatively, they may attend a special education program.⁸² However, School segregation was practiced in the United States based on their race and ethnicity. Therefore, continue to separation between the haves from the have-nots which leads to a root marginalized and discrimination of a disadvantaged group.

While not prohibited from having or attending schools, various minorities were barred from most schools that admitted white students. Therefore, the history of classroom segregation in the US reflects the nation's continuing legacy of racism and systemic racial inequality. As recently as the 1950s, racial segregation in schools was the law of the land.⁸³ More than six decades after the Supreme Court ruled that law unconstitutional, many schools are still heavily segregated and substantial disparities in school funding along racial lines remain. Leaders in education continue to seek ways to ensure that students across all race, ethnicity, and socioeconomic background, have equitable access to quality education. This requires addressing the role classroom

⁸²UNICEF. The Right of Children with Disabilities to Education: A Rights-Based Approach to Inclusive Education. Geneva: UNICEF Regional Office for Central and Eastern Europe and the Commonwealth of Independent States (CEEICIS), 2012. also visit the UNICEF CEEICIS website at www.unicef.org/ceecis

⁸³<https://soeonline.american.edu/blog/classroom-segregation/>. Accessed on 28.07.2025

segregation plays in exacerbating disparities and developing teaching approaches that offset the negative impact of segregation in schools.

As early as the 1930s, members of the National Association for the Advancement of Colored People (NAACP) were looking for strategies to desegregate schools through lawsuits targeting the legal doctrine of “separate but equal. However, it was not until *Brown v. Board of Education of Topeka* that the US Supreme Court unanimously outlawed state-sanctioned school segregation, ruling it unconstitutional. Thus, in 1950, only 1 in 10 Black adults graduated from high school compared to 4 in 10 white adults.

2.1.5 Integration

This is a kind of education whereby Students with disabilities can also being integrated into the general education system, usually in special classes, if they can meet the requirements. This school promotes diversity, respect, and understanding among diverse cultures, religious beliefs, socio-economic backgrounds, and abilities. It has gained grant-maintained intergraded status or controlled intergraded statutes under the education system, ensuring a harmonious and inclusive learning environment.

2.1.6 General or Mainstream Education

Main Streaming is the practice of educating students with special needs in regular classes during specific time periods based on their skills.⁸⁴ This means regular education classes are combined with special education classes. Therefore, Mainstreaming is an

⁸⁴<https://soeonline.american.edu/blog/classroom-segregation/>. Accessed on 28.07.2025

educational practice that involves teaching students with special needs in regular classes with non-disabled peers for specific periods. That means regular special classes are combined with special education classes. It is a legal doctrine of the Least Restrictive Education (LRE) environment, aiming to create heterogeneous classrooms where children can perceive, understand, and tolerate diversity.

However, Mainstreaming is mainly used in the American education system and involves removing exceptional children from special classes and schools, placing them in regular classroom settings. Schools in developed countries employ four categories of special education services based on the level of contact between students with special needs and non-disabled students. Mainstreaming is closely related to integration and aims to create an inclusive classroom environment for all students. The following are types of Mainstreaming of education namely: -Integrated Inclusive and Exclusive Education.

2.1.6.1 Education for All

The World Conference on Education for All initiated and upheld everyone's right to an education, pledging member nations to take the required actions to fulfill basic learning requirements and reaching a consensus on the Framework for Action to fulfill Basic Learning requirements in order to accomplish the goals of education for all.⁸⁵ Therefore, the concept of "Education for All" highlights the necessity of giving historically underrepresented populations, such as those with disabilities, access to

⁸⁵World Declaration on Education for All, Jomtien, Thailand (1990)

education.⁸⁶ While EFA offers the goal of universal entitlement, inclusion can be understood not merely as a vehicle for ending segregation but rather as a commitment to creating schools which respect and value diversity, and aim to promote democratic principles and a set of values and beliefs relating to equality and social justice so that all children can participate in teaching and learning.⁸⁷

2.2 Disability as a Concept

Disability is one of the most serious barriers to education across the globe. Of course, various societies and cultures have quite varied ideas on what disability is, despite of being referred to the loss or limitation of opportunities in society due to social and environmental barriers. The Persons with Disabilities Act departed from, Medical Model views disability as individuals with long-term physical, mental, intellectual, or sensory impairments that, when combined with various barriers, may hinder their full and effective participation in society on an equal basis with others.⁸⁸ It is revealed that, these impairments can result from birth complications or develop over time due to diseases or accidents.⁸⁹

Additionally, The World Health Organization (WHO) defines disability as a combination of health issues, personal, environmental, and social factors.⁹⁰ It identifies three types of disabilities: physical or functional impairment, activity constraint such as

⁸⁶ Ibid.

⁸⁷ Ibid.

⁸⁸ Article 3 of the Persons with Disabilities Act, No.09, 2010.

⁸⁹ Article 1 of the UN Convention on the rights of Persons with Disabilities (CRPD), 2006

⁹⁰ WHO Report of 2012.

exclusion from school or work, difficulties with walking, hearing, seeing, or solving issues and lastly is participation restriction.⁹¹ Therefore, Persons with disabilities include those with medical conditions and those with limb, vision, and memory loss. Disability further is termed as a disorder or impairment that makes it difficult to perform activities others do, often cause by man-made causes like accidents or healthcare negligence.⁹²

2.2.1 Impairment

The Concept of Impairment: Impairment is defined as a loss of or damage to sensory organs, this may be so from birth or acquired later, the impairment disturbs the normal functioning of the organs in its respective area. Impairment may be Biological Disability, Functional Handicap, and Social Introduction: Thesis often used Inter changeable with different meaning. However, it contrasts this with the social model, which views disability as arising from societal barriers rather than individual deficiencies.⁹³

2.3 Physical Disability as a Concept

Physical disability refers to limitations in strength, mobility, and physical labor due to permanent body function impairments. It significantly impacts daily tasks and can lead to hearing, memory, short stature, and speech impairments. Impairments can be

⁹¹ WHO Report of 2023, available at, <https://www.who.int/news-room/fact-sheets/detail/disability-and-health>, accessed on April, 2024?

⁹² WHO Report of 2023, available at, <https://www.who.int/news-room/fact-sheets/detail/disability-and-health>, accessed on April, 2024?

⁹³ Oliver, M, The Social Model of Disability: Thirty years on. Disability & Society, 2013, 28(7), 1024–1026. <https://doi.org/10.1080/09687599.2013.818773>, Read also Oliver, M., & Barnes, C. (2012). Disability Studies, Disabled People and the Struggle for Inclusion, 1st Ed, The Sociology of Disability and Inclusive Education , Rout ledge, 2013, p. 14, available at <https://doi.org/10.4324/9780203723234>.

temporary or permanent, ranging in intensity and can be caused by movement problems, dexterity impairments, or chronic illnesses. These disabilities can be congenital or acquired, with common types including paraplegia, quadriplegia, multiple sclerosis, hemiplegic, cerebral palsy, dystrophy and polio.⁹⁴

2.3.1 Rights of Persons with Physical Disabilities

People with disabilities (PWDs) have rights guaranteed under the Convention on the Rights of Persons with Disabilities (CRPD). Among these rights are the rights to life, equality before the law, non-discrimination, and education.⁹⁵ The treaty was implemented in the nation by the Persons with Disabilities Act of 2010. This treaty requires Tanzania to take steps to safeguard the rights of individuals with physical impairments especially children with special consideration to ensure that they enjoy their human rights on an equal footing with others. The regional instruments also prioritize inclusion, non-discrimination, and the eradication of obstacles to education in order to safeguard the right to education for people with physical impairments. The African Charter on Human and Peoples' Rights (ACHPR) is one of that offers a broad framework for human rights that promotes the inclusion of all people, including those with disabilities, even if it does not particularly address education for persons with disabilities.⁹⁶

⁹⁴ Available at <https://www.lawinsider.com/dictionary/physical-impairment>, accessed on 1st November, 2023

⁹⁵ Article (2) (4), and (5) of the Convention on the Rights of Persons with Disabilities (CRPD), 2006.

⁹⁶ The African Charter on Human and Peoples' Rights (ACHPR), 1981.

Despite significant efforts to develop the idea of inclusive education in theory, many States found it challenging to put the theory into practice and develop concrete policies that would create a truly inclusive educational system in which children with disabilities could exercise their right to an education on an equal footing with other students. The Special Reporter identified potential components for inclusion in strategic advice on inclusive education and stated that states and other stakeholders would benefit from its development. It is recommended that states implement a legally-mandated "no rejection" policy that guarantees all children receive an education in regular schools. Education systems need to change from asking disabled students to adjust to the requirements of regular schools to one where the education.⁹⁷ It focuses on education, recognizes inclusion as a crucial part of society. Inclusive education must start with children with disabilities attending the same classrooms as children without disabilities.⁹⁸

Acknowledging that high-quality education was inclusive and beneficial to every kid and member of the community was crucial. It was necessary to have an enforceable legislative framework that acknowledged the right to inclusive education. Pupils should be allowed to exercise their right to attend a mainstream school, and schools should not be allowed to pick which pupils they admit. Public funding for inclusive education-focused teacher training must be guaranteed. Plans for general accessibility must include

⁹⁷General Comments on Article 24 of the Convention on the Rights of Persons with Disabilities: the right to Inclusive Education.

⁹⁸ Article (24) of the Convention on the Rights of Persons with Disabilities, (CRPD) 2006.

provisions for education accessibility, and both general and customized forms of assistance must be made accessible.⁹⁹

2.4 Theories on Physical Disabilities Right to Education

Globally, several theories provide a foundation for understanding and advancing the right to education for individuals with disabilities from different perspective and placed in separate schools towards inclusive education where students with disabilities learn alongside their peer in general education settings or mainstream namely:-

2.4.1 Social Justice Theory

This theory emerged in 1960's to 1980's in which it reaffirms that, All children deserve a quality education, in which education is crucial: for their social skills, their health, mental and physical development. Education plays a fundamental role in preparing each child to live in society in the spirit of understanding, peace, tolerance, equality and friendship.¹⁰⁰

Here disability is socially constructed, rather than being a health condition requiring medical treatment. People with disabilities are seen as different from normal and a problem. The social model acknowledges impairment and its impact, but challenges the physical, attitudinal, communication, and social environment to accommodate it as an

⁹⁹Ibid, Fn. No.101.

¹⁰⁰ <https://www.ohchr.org/sites/default/files/Documents/Issues/Disability/RightAccessJusticeArticle13/CSO/DLA2.pdf>

expected human occurrence.¹⁰¹ Social justice theory and the right to education for individuals with physical disabilities are interconnected with the Americans with Disabilities Act (ADA). The ADA requires accessible communities, workplaces, and higher education. Countries have taken steps to make education accessible, including reviewing school building design, modernizing ramps and lifts, providing academic services and special care, and developing effective mechanisms.¹⁰² The social model of disability is now the internationally recognized way to view and address disability, while social justice is defined by the UN as equal access to social, political, and economic possibilities for all people. This was also accompanying Framework for Action which marked a turning point by advocating for the inclusion of all students with disabilities in mainstream schools. It emphasized the importance of adapting education systems to meet the diverse needs of learners.

2.4. 2 Principal of Equality before the Law.

Equality before the law is a fundamental human rights principle that guarantees all individuals regardless of physical ability equal legal protection and entitlements. It affirms that everyone is free, equal, and entitled to recognition and dignity under the law. This principle is enshrined in most of the international human rights law.¹⁰³ On the other side, Non-discrimination is a core aspect of equality before the law. It ensures that

¹⁰¹ Connor, D. J, Social Justice in Education for Students with Disabilities: In Handbook of Social Justice in Education, SAGE Publications, 2014, (pp. 111–128)... <https://doi.org/10.4135/9781446282236.n9>.

¹⁰² https://www.researchgate.net/publication/288259285_Social_justice_in_education_for_students_with_disabilities Accessed on 28.07.2025

¹⁰³ Article 26 of the International Covenant on Civil and Political Rights and the African Charter on Human and Peoples' Rights of 1945.

individuals with disabilities are not excluded from educational systems due to physical impairments visible or invisible and that they have equal opportunities for admission, participation, and success. Discrimination, whether direct or indirect, must be actively addressed by states through reasonable accommodations and inclusive policies.¹⁰⁴ These movements of theories has influenced the International and National Legal Obligations. State parties to the UNCRPD are legally required to remove discriminatory legal and social barriers and ensure access to inclusive education systems. They must provide support services, raise awareness, and implement inclusive teaching practices. Nationally, laws like the Persons with Disabilities Act reinforce these commitments by mandating access to assistive technologies, equal protection, and non-discrimination in educational settings.

This principle reinforced by the principle of non-discrimination, is essential to ensuring that individuals with disabilities have equal access to quality education. Through international conventions and national laws, states are obligated to eliminate all forms of discrimination, provide necessary accommodations, and create inclusive educational environments where all learners can thrive equal barriers.¹⁰⁵ Tanzania, Constitution has

¹⁰⁴The General Comment No.6 of (2018) read together with Article 5- (3) the Convention on the Rights of Persons with Disabilities (CRPD), 2006.

¹⁰⁵Article 1-(2), 2-(2) the Convention against Discrimination in Education (CADE), 1960.

Article 1(a) The UNESCO Convention against Discrimination in Education (1960), See also Article 13 of the International Covenant on Economic, Social and Cultural Rights (1966) draws extensively on UNESCO's Convention against Discrimination in Education, and like the Convention, covers the right to education comprehensively.

provisions which encourage equality and prohibit discrimination.¹⁰⁶ Also being a signatory to the UNCRPD, recognizes the right to inclusive, non-discriminatory education. Its constitution upholds equality before the law, dignity, and justice for all citizens.¹⁰⁷ However, Tanzania faces significant practical challenges in realizing these rights due to limited resources and infrastructure, hindering the implementation of quality education for individuals with disabilities.¹⁰⁸

2.4.3 Transformative Learning Theory.

Jack Mezirow's Transformative Learning Theory, developed in 1991, explains how adult learning can involve a fundamental change in worldview, a process called perspective transformation. This transformation occurs when individuals critically reflect on their existing beliefs, values, and assumptions, leading to more inclusive, open, and adaptive perspectives. Learning becomes transformative as individuals reinterpret past experiences and integrate new insights into their meaning schemes Experiences.¹⁰⁹

From 1991 to 1994, Mezirow expanded his theory to include the idea of a "disorienting dilemma" a life event that causes emotional disruption and reveals the inadequacy of prior perspectives. This triggers a learning process involving deep reflection, such as on

¹⁰⁶ Article1977

¹⁰⁷ Article 12-(2) , 13-(1) of the Constitution of the United Republic of Tanzania (Cap 2, R.E 2008)

¹⁰⁸ The Persons with Disabilities Act, 2010.

¹⁰⁹ https://www.researchgate.net/publication/325117850_Mezirow_and_the_Theory_of_Transformative_Learning/ci_station/download, accessed on August, 2024.

disability, societal norms, and the effects of ableism.¹¹⁰ Transformative learning is facilitated by dialogue, critical reflection, and problem-solving. It involves changes not just in thinking (psychological), but also in beliefs (convictional) and behaviors (behavioral). These changes help learners become more empowered and self-directed.¹¹¹

In practice, this theory has been applied in disability education within social work, where it supports a shift away from traditional views. It emphasizes the value of cultural and socioeconomic diversity, promoting education as a tool for genuine empowerment of individuals with disabilities. Through this approach, people with disabilities are supported in living lives of their choosing with meaningful personal and professional opportunities. Educators incorporate transformative learning by integrating disability education early in social work training. This helps students understand the challenges faced by people with disabilities and develop the critical thinking and reflective skills needed to combat ableism and support affected individuals and families. In contexts like Tanzania or elsewhere, this approach reinforces the idea that education should lead to actionable change not just awareness but strategies that enhance inclusion and empowerment.

2.4.4 Human Right Theory.

The theory emerged as a framework to integrate human rights standards into educational policy and development emphasizing into: Non-discrimination and equality,

¹¹⁰ https://www.researchgate.net/publication/325117850_Mezirow_and_the_Theory_of_Transformative_Learning/ci_station/download, accessed on August, 2024.

¹¹¹ Ibid.

Universality, indivisibility of rights, Participation and accountability, Empowerment of marginalized groups.¹¹² This right was initiated by the Universal Declaration of Human Rights which states that, “all human beings are born free and equal in dignity and rights”, promoting invisibility and belonging to every person.¹¹³ This declaration laid the groundwork for recognizing education as a universal, inalienable, and indivisible human right, essential for the exercise of all other rights.¹¹⁴ It emphasized that human rights are inherent to every individual’s dignity, cannot be ranked hierarchically, the denial of one right such as education undermines others, like health or work.¹¹⁵

Under this right most of the Conventions and treaties have incorporated it into international law, by placing binding commitments on ratifying States. Thus Provisions on the right to a quality education inclusive of human rights values appear to various International key instruments that advocate for non-discriminatory and equal educational opportunities for a child are basically: The Convention on the Rights of the Child (CRC) asserts that every child has a right to education without discrimination. The Salamanca Declaration (1994) and the UN Standard Rules on the Equalization of Opportunities for Persons with Disabilities (1993) promoted inclusive education as a mechanism for equality. The World Declaration on Education for All (1990) and later

¹¹² Article 26 of the Universal Declaration of Human Rights (UDHR), Read also Article 13 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) and Articles 24 of the Convention on the Rights of Persons with Disabilities (CRPD).

¹¹³ Article 26 of the Universal Declaration of Human Rights (UDHR) 1948.

¹¹⁴ Article I, Ibid.

<https://www.unfpa.org/resources/human-rights-principles>

¹¹⁵ The United Nations Educational, Scientific and Cultural Organization’s Convention against Discrimination in Education (1960), the International Covenant on Economic, Social and Cultural Rights (1966) and the United Nations Convention on the Rights of the Child (1989).

the Dakar Framework for Action (2000) called for universal access to quality basic education for all, including learners with disabilities.¹¹⁶ These instruments collectively acknowledged education as a vehicle for empowerment, dignity, social justice, and human development, while advocating for non-discrimination and accessibility for all.

¹¹⁷

UNCRPD affirm the right to education as the basic human right by promoting inclusive systems.¹¹⁸ Therefore, these rights apply equally to all and allow participation in decisions affecting their lives.¹¹⁹ The theory upheld by the rule of law and strengthened through legitimate claims for requires states and duty-bearers be held accountable for ensuring the right to education through inclusive policies, legal safeguards, and access to justice. It is provided that “No one should suffer discrimination based on race, color, ethnicity, gender, age, language, sexual orientation, religion, political opinion, national, social or geographical origin, disability, property, birth, or other status as established by human rights standards.”¹²⁰ It also obliges participatory mechanisms, enabling civil society, individuals, and marginalized communities to actively claim their rights and seek redress in cases of violations. Frameworks.¹²¹

¹¹⁶ Article 1 of the Universal Declaration of Human Rights, (UDHR), 1948

¹¹⁷ Ibid.

¹¹⁸ Article 26 Ibid, read also article 23 of The Convention on the Rights of the Child (CRC), 1989.

¹¹⁹ Article 24 of the Convention on the Rights on Persons with Disabilities (CRPD), 2006.

¹²⁰ Article 26 of the International Covenants on Civil, Political Rights (ICCPR), 1966.

¹²¹ Article 26 of The Universal Declaration of Human Rights (UDHR), 1948 see also the Convention on the Rights of Persons with Disabilities (CRPD), 2006.

Through this theory, International law now recognizes people with disabilities as rights-holders, not just welfare recipients. It supports rights-holders in claiming their rights and duty-bearers in meeting their obligations to protect and promote these rights. Their obligations.¹²² The theory further requires laws, administrative procedures, and mechanisms to address denials and violations, with accountability rooted in universal standards.¹²³ These systems ensure effective participation in society by providing reasonable accommodations and adopting universal design principles, recognizing education as a human right.¹²⁴

The theory suggests that every child has an equal right to attend school, but it is hindered by economic, social, and cultural factors. Governments must develop legislation, policies, and support services to address these barriers.¹²⁵ Schools should be safe, technologically accessible, and affordable, with government support for resources, qualified teachers, and inclusive policies.¹²⁶ A human rights-based approach ensures universal access, respecting children's identity, agency, and integrity.

¹²² Article 24-(2) (b) (c), Also sees the general comment No. 4 (2016) on the right to inclusive education.

¹²³ The Persons with Disabilities Act, No.09,2010

¹²⁴ The United Nations Convention on the Rights of the Child (CRC), 1989 read also The World Declaration on Education for All (1990), The United Nations Standard Rules on Equalization of Opportunities for Persons with Disabilities (1993) and The Salamanca Declaration and Framework for Action (1994).

¹²⁵ United Nations Educational, Scientific and Cultural Organization, (2007), a human rights-based approach to education for all: A framework for the realization of children's rights to education and rights within education, New York, NY, US: Author. Available at [www.unicef.org] (<https://www.unicef.org>), ISBN 978-92-206-4188-2.

¹²⁶ Article 26, Universal Declaration of Human Rights; articles 2, 22, 23, 27, 28 and 32, Convention on the Rights of the Child; article 13, International Covenant on Economic, Social and Cultural Rights; article 10, Convention on the Elimination of All Forms of Discrimination against Women; articles 4 and 5, UNESCO Convention against Discrimination in Education; article 24, Convention on the Rights of Persons with Disabilities, 2006.

Over time, international and national legal instruments have advanced a human rights-based approach to education, emphasizing equality before the law, non-discrimination, and inclusive participation. For individuals with disabilities, this approach affirms that education is not a privilege but a right, and calls on all actors from governments to international institutions to ensure full realization of this right through robust legal, institutional, and social frameworks.

2.4.5 Inclusive Education Theory.

This theory links directly to the United Nations Sustainable Development Goal 4 (SDG 4), which commits to "ensure inclusive and equitable quality education and promote lifelong learning opportunities for all." By implementing inclusive education policies, societies invest in comprehensive growth that respects each person's rights and fosters equal opportunities for all.¹²⁷

This theory underscores the responsibility of governments to uphold these internationally recognized rights, requiring commitment not only to outcomes but also to fair and just processes. Inclusive education aims to create societies free from prejudice and promote equality of opportunity and rights for all students. Additionally, Inclusive education theory is a comprehensive approach that integrates human rights law, social models of disability and Educational theories like Universal Design for learning to remove societal and structural barriers. It also calls for reasonable accommodation to

¹²⁷ [https://www.unesco.org/en/articles/what-you-need-know-about-right-education.](https://www.unesco.org/en/articles/what-you-need-know-about-right-education) Accessed on 28.07.2025

meet individual needs, fostering social justice and equality. It emphasizes accessibility and adaptability for individuals with disabilities, ensuring equitable access to social services, information, communication, and physical spaces.

The theory is rooted in the Universal Declaration of Human Rights, is a foundation for inclusive behavior and social justice.¹²⁸ Other international instruments includes: - ICESCR, UNCRPD, UNCRC, Elimination of Discrimination against Women, and the Salamanca statement and framework of Action used to ensure on special needs education. This is a kind of education that includes everyone, with non-disabled and Disabled people (including those with “special educational needs”) learning together in mainstream schools, colleges and universities by removing barriers and obstacles that may lead to exclusion for those who have serious disadvantages and disabilities.¹²⁹ The Convention on the Rights of Persons with Disabilities (CRPD) requires governments to align laws and policies and collect and analyze data to ensure effective service for children. This landmark for education in the 21st century highlights the root causes, necessity, legal and practical aspects, and the need for increased awareness. The CRPD is an integrated part of the human rights framework.¹³⁰

Globally, inclusion education was recognized as the key elements to achieving the right to education for all, as it was an international agreements between member states during Salamanca statement framework of action that: Instead of attending separate classrooms

¹²⁸ Article 26-(1) the Universal Declaration on Human rights (UDHR), 1948.

¹²⁹ Article 24-(1) of the Convention on the Rights of Persons with Disabilities(CRPD), 2006

¹³⁰ The General Comments on Article 24 of the Convention on the Rights of Persons with Disabilities, 2006(

or schools, kids with different learning needs attend courses alongside their peers who are developing normally and do not have disabilities inclusive education.¹³¹

Regardless of a student's background or aptitude, inclusive education promotes their complete development by integrating special education with general education. It focuses on modifying the surroundings to accommodate disability and giving historically marginalized populations access to meaningful educational opportunities. Equal learning opportunities are guaranteed for all pupils, including those who speak minority languages and have impairments, through inclusive education. Classrooms and schools run on the community schools.¹³² Perhaps, there are some philosophers with different perspectives views on the concept of inclusive education such as:

UNESCO defines inclusive education as a process that promotes diversity in learning, cultures, and communities by increasing participation and reducing exclusion. By 1994, it aimed to transform education systems to respond to learners' diverse needs, fostering a comfortable environment for teachers and learners. By 2008, it emphasized inclusive education as a principle for sustainable development, lifelong learning, and equal access to learning opportunities, acknowledging the dynamic interaction between health conditions, environmental factors, and personal factors.

Further, Tarkala and Aunio defined inclusive education as a flexible approach that allows children of various backgrounds to participate in general education programs.

¹³¹ UNESCO, The Salamanca World Conference on Special Education in 1994

¹³² The Salamanca Statement and Framework for Action (1994)

According to the authors, this method represents the pinnacle of special needs education advancement, requiring significant cooperation and coordination from adults and the entire business. Additionally, UNICEF defines inclusive education as a combination of access to education, quality education, and respect for rights within education. Both UNESCO and the World Health Organization recognize the importance of context and environment in enabling or disabling individuals with disabilities.¹³³ Human rights are based on dignified human existence, with entitlements considered a human right only if necessary for a dignified life. States are obligated to protect citizens' rights and provide necessary facilities. However, the state's ability to fulfill obligations may depend on other factors, such as economic conditions. Children with disabilities may identify with other aspects of their identity, such as gender, economic status, or ethnicity, increasing their vulnerability. Investment in addressing the right to education must consider these multi-vulnerabilities, as they significantly increase their vulnerability.¹³⁴ The term "inclusive" refers too much more than just allowing kids with special needs or disabilities to live in the general population. Programmers of inclusive education don't concentrate on making accommodations for these kids.

2.4.5.1 Aims and Objective of Inclusive Education.

Since inclusive environment is opposed to segregated education, basically it aims to identify and enroll children with disabilities in regular schools by providing them with effective academic support a knowledge on how to face and the challenges in and

¹³³ This Approach is reinforced by the Salamanca Statement and Framework for Action on Special Needs Education (1994).

¹³⁴ From Wikipedia, the Free Encyclopedia.

around the society they are a part of education for all: This entails providing genuine learning opportunities to all students in the same classroom at the same school who have previously been denied their admissions. This exhibit a high degree of social interaction with classmates who are not impaired. That, Every student's educational requirements are met in an inclusive school by having them supported by classmates and other members of the school community.¹³⁵

2.4.5.2 Debate on Inclusive Education.

Globally, Recognition of inclusion education was recognized as the key elements to achieving the right to education for all, as it was an international agreements between member states during Salamanca statement framework of action that: Instead of attending separate classrooms or schools, kids with different learning needs attend courses alongside their peers who are developing normally and do not have disabilities. This allows them to get additional support and resources in an inclusive environment.¹³⁶

According to the idea of inclusive education, kids with special needs should be in the same classroom as their peers who are the same age and do not have special needs. Therefore, when it comes to academic topic groups who oppose inclusive education, people with special needs actually learn more in conventional classroom settings as long as they receive the assistance and support they require both inside and outside of the classroom.

¹³⁵The General Comments on Article 24 of the Convention on the Rights of Persons with Disabilities, (CRPD).

¹³⁶Salamanca Statement Framework of Action of 1994.

Through shared pre-schools and schools with a suitable network of support services, all young learners, with or without impairments, can study together, according to the concept of inclusive education.¹³⁷

The World Bank's argues that, most countries make explicit reference to persons with disabilities' right to education in their constitutions, laws, and policies. However, definitions are rarely included, they vary widely, and their implementation (if it exists) often aligns more with segregated learning and special schooling than true inclusion. Even when countries claim they are following inclusion, they may only be placing children with disabilities in regular classrooms, and not creating a learning environment that addresses their needs.¹³⁸ Learners with disabilities are frequently placed in special schools or classrooms because of the belief that they will benefit more from learning in such settings, separating learners in their own classrooms. Thus schools isolates learners with disabilities and bolsters existing negative stereotypes.¹³⁹ Although it will take time to reach full inclusion, taking steps toward inclusive schools and away from segregated and integrated learning is critical to meeting SDG 4.¹⁴⁰

Consequently, a largely parallel, international debate has developed about 'inclusive education', within which many conflicting positions exist with a view that some children are 'uneducable' and that overcrowded and under-resourced schools would not be able

¹³⁷ https://kanchiuniv.ac.in/coursematerials/B.Ed_Course_Material/Inclusive_Education.pdf.

¹³⁸ World Bank's Every Learner Matters Report (2019).

¹³⁹ World Bank's Every Learner Matters Report (2019).

¹⁴⁰ Please see USAID's Mapping of Tools for Disaggregation by Disability Status for a Description of the Social and Medical Models of Disability Inclusive Education in Sub-Saharan Africa USAID Government.

to cope. Although inclusive education is defined by some writers in terms of overcoming barriers to learning and development for all children, in the context of Southern countries it tends to fill the gap left by EFA and so focuses almost exclusively on disabled children.¹⁴¹

Also it has been argued as to whether or not article 24 of the Convention on CRPD bans all special schools for children with disabilities, hence there is no debate that it prohibits a system which assigns children with disabilities to separate, special schools solely on the basis of their label of disability, as is provided in the Act. Such a policy runs afoul the right to equality and non-discrimination as well as the general principles of the CRPD. Thus although the CRPD does not expressly ban special schools, article 24 of the CRPD has been interpreted by the CRPD Committee as requiring changes in countries that have a system of special schools for students with disabilities. However, the European Court on Human Rights (ECtHR) protects the right of persons with disabilities to education. Therefore it has also consistently held that special schools may amount to discrimination, as have some courts in the US.¹⁴² Therefore, the foundation of inclusive education is the belief that every student can benefit from and contribute to a supportive learning environment. The objective is to establish discrimination-free society. Thus Governments should align laws and policies with the CRPD to ensure quality education

¹⁴¹ Miles, S., Smith, et al, The Education for all and Inclusive Education Debate: Conflict, Contradiction or Opportunity? 14(1), International Journal of Inclusive Education, 2009. Available at: <https://doi.org/10.1080/13603110802265125>.

¹⁴² Article 2 of Protocol No.1 of the European Convention on Human Rights.

for young children's well-being, sustainable economic and social development, and the Millennium Development Goals.¹⁴³

2.5 Conclusion.

The right to education for individuals with physical disabilities is influenced by various theories and legal frameworks. Despite these efforts, many states struggle to implement inclusive education policies with barriers. The Special Reporter recommends a legally-mandated "no rejection" policy, an enforceable legislative framework, and accessibility provisions in general accessibility plans. Education is rooted in fundamental human rights, and a dignified human existence relies on basic education. Access to education is essential for individual development and understanding the world. Therefore this research will base in human right theory in the examining the right to education for individuals with physical disabilities.

CHAPTER THREE

THE BEST PRACTICES UNDER INTERNATIONAL STANDARDS IN ENSURING THE RIGHT TO EDUCATION FOR INDIVIDUALS WITH PHYSICAL DISABILITIES

3.0 Introduction.

The previous Chapter has explored different concepts as well as theories concerning the right to education for individuals with physical disabilities. However this chapter, examines the best practices under International Instruments in ensuring the right to

¹⁴³ United Nations Educational, Scientific and Cultural Organization, EFA Global Monitoring Report 2007: Strong Foundations – Early childhood care and education, UNESCO, Paris, 2006, p. 12

education for individuals with Physical Disabilities, by identifies the standards, obligations and regulations imposed towards member states. Historically, Since World War II, numerous International instruments, articles, treatises, and national laws have been drafted to protect the human right as to education. Therefore, this study focuses on theories, international instruments, customs, general principles of law, cases, and soft law from various inter-governmental and non-governmental organizations. Also domestic laws, including state law and local ordinances, should also be considered, as the legal right to education is applied and implemented differently among different states.

Thus, the UN Standard Rules and Education for All (EFA) prohibit disability discrimination in education, supporting the rights of handicapped individuals as well. This was supported by the World Declaration on Education which also, emphasizes high-quality education for all, based on human rights and national development. Therefore, globally numerous treaties and agreements, including the UN Charter of 1945. The Charter promotes educational cooperation among nations for stability and wellbeing. As its preamble emphasizes fundamental human rights, dignity, and equal rights for men and women.

Therefore, the Convention on the Rights of the Child is one of the instruments of the international human rights framework. These treaties serve as a framework for discussing and applying human rights, becoming legal obligations for states that choose to be bound by them. The framework also establishes mechanisms to hold governments

accountable for violating human rights. The instruments of the international human rights framework include the Universal Declaration of Human Rights and nine core human rights treaties. To ensure these rights and compliance with laws and practices, the UN has ratified several significant international treaties and conventions.

3.1 International Instruments.

3.1.1 UN Charter of 1945.

This is a foundation treaty of the United Nations, represented by 50 Nations, in which the charter was established human rights as a core purpose and guiding principles of the organization. It commits member states to promote universal respect for and observance of human rights and fundamental freedoms for all” while the charter does not explicitly detail specific rights, it lays the groundwork for the development of International Human Rights law, including the Universal Declaration of Human Rights (UDHR).¹⁴⁴

3.1.2 Universal Declaration for Human Rights (UDR), 1948.

This is as a core human right law, set of a common standard on human rights. Although the Declaration is not part of binding International law, its acceptance by all countries around the world as just being a member of United Nations Charter of 1945. This gives great moral weight to the fundamental principle that, all human beings are born free and equal in dignity and has the right to education, whatever our nationality, place of residence, sex, or ethnic origin, color, religion, language, or any other status, are to be

¹⁴⁴ The United National Charter of 1945.

treated equally and with respect.¹⁴⁵ However, this is termed as a milestone document in the history of human rights elaborating everyone right to education which shall be free, at least in the elementary and fundamental stages.¹⁴⁶ Others includes:-

3.1. 3 Declarations of the Rights of the Child (1959).

The Declaration of the Rights of the Child is a U.N. General Assembly resolution that expands the right to education, as recognized by the Universal Declaration of Human Rights and the 1924 Geneva Declaration of the Rights of the Child.¹⁴⁷ It acknowledges the need for special safeguards and care for children due to their physical and mental immaturity.¹⁴⁸ It declares children's right to free and compulsory elementary education, with parents' primary responsibility.¹⁴⁹ However, it is cemented that education should promote general culture, develop abilities, individual judgment, moral, social responsibility, and protect children from discrimination. It also emphasizes understanding, tolerance, friendship, peace, and universal brotherhood, with talents and energy devoted to service.¹⁵⁰

¹⁴⁵ Article 1 of the Universal Declaration of Human Rights, (UDHR), 1948 available at: <https://www.unicef.org/child-rights-convention/children-human-rights-explained>, accessed on June 2024.

¹⁴⁶ Article 26-(1), I bid.

¹⁴⁷ Declaration of the Rights of the Child of 1959, retrieved from <https://www.humanium.org/en/geneva-declaration/> Accessed on 28.07.2025

¹⁴⁸ Principle 5, Ibid.

¹⁴⁹ Principal 7 and 10 of the Declaration of the Rights of the Child, 1959

¹⁵⁰ Principal 15 and 7, Ibid.

3.1.4 UNESCO, Convention against Discrimination in Education of 1960.

This is termed as a key component of UNESCO's Constitutional which mandate the right to education, acknowledged as a universal human right.¹⁵¹ Therefore, Non-discrimination and equitable educational opportunities are codified into international norms by this Convention as a major UNESCO normative document. Notably this convention was adopted in 1960 and became operative on May 22, 1962. As of December 2005 thus about 91 states have ratified it. There are 110 member states as of right now including Tanzania and Kenya. Thus, this is the first international agreement, termed as legally binding against Discrimination in Education which upholds the right to education extensively.¹⁵² So creating fundamental rights to education.¹⁵³ Given that, discrimination in education is against the Universal Declaration of Human Rights, it acknowledges that “everyone has the right to an education...” However to ensure, by legislation where necessary, that there is no discrimination in the admission of pupils to educational Institutions.¹⁵⁴

The agreement aims to ensure equal access to education for all, assessing the government's commitments to fundamental rights. States Parties are legally obligated to create and implement national policies promoting equality of opportunity and treatment in education Treatment in education.¹⁵⁵ These policies aim to expand the right to education for all, ensuring equal access without discrimination, especially for vulnerable

¹⁵¹ Article 5 of the UNESCO, Convention against Discrimination in Education of 1960.

¹⁵² Ibid.

¹⁵³ Wikipedia, The free Encyclopedia, accessed on September 2024.

¹⁵⁴ Article 3-(b) UNESCO, Convention against Discrimination in Education of 1960.

¹⁵⁵ Article 4 UNESCO, Convention against Discrimination in Education of 1960.

groups. States Parties must outlaw discrimination in school fees and eliminate laws and administrative procedures that support discrimination in education. The CADE mandates the development and implementation of national policies, including free and universal basic education, equitable access to higher education, and universal access to secondary school.¹⁵⁶

Tanzania, a member state of the United Nations Educational, Scientific and Cultural Organization (UNESCO), ratified a pact in 1979, requiring its national policies to promote inclusive education systems and equality. The Convention aims to ensure full and equal opportunities for education for all, particularly marginalized and vulnerable groups, including people with disabilities, and is incorporated into other international frameworks.

3.1.5 The International Covenant on Civil and Political Rights (1966) (ICCPR).

The International Covenant on Civil and Political Rights (ICCPR), established in 1966, is a legally binding framework that guarantees the preservation of civil and political rights, including education. It was approved by Resolution 2200A (XXI) on March 23, 1976, and ensures conventional civil rights and liberties, including the prohibition of discrimination based on race, color, sex, language, religion, political opinion, national or social origin, property, birth, or other status.¹⁵⁷ Out of 167 states parties, 67 have ratified and signed the ICCPR, emphasizing freedom, justice, and peace based on

¹⁵⁶ Article 4(a), Ibid.

¹⁵⁷ Article (2) and (26) of the International Covenant on Civil and Political Rights (ICCPR), 1966.

everyone's inherent dignity and equal rights.¹⁵⁸ The Covenant outlines the responsibility of states to establish a Human Rights Committee to enforce the International Covenant on Civil and Political Rights (ICCPR) and provide effective remedies for rights violations.¹⁵⁹ This committee should be competent and accessible for courts of law, allowing individuals to seek redress.¹⁶⁰ States must respect and guarantee these rights without discrimination, including based on race, color, sex, language, religion, political opinion, national or social origin, property, birth, or other status.¹⁶¹ Tanzania as well ratified the International Covenant on Civil and Political Rights (ICCPR) in 1976, but has not yet ratified its optional protocol. The core instrument for civil and political rights, particularly the right to education for those with physical disabilities, is the ICCPR, a legally binding treaty that Tanzania is a State party.¹⁶²

3.1.6 International Covenant on Economic, Social and Cultural Rights (ICESCR) 1966.

The International Convention on the Rights of Persons with Physical Disabilities (ICESCR) was adopted in 1966 by the General Assembly after two decades of drafting disputes. It aims to provide a universal right to education without discrimination and establishes a framework for achieving this right.¹⁶³ This includes free compulsory

¹⁵⁸ Ibid.

¹⁵⁹ Article 40,41 and 42 of The International Covenant on Civil and Political Rights (ICCPR), 1966

¹⁶⁰ Preamble of the International Covenant on Economic, Social and Cultural Rights (ICESCR) 1966, Read also Article 1-(1), Ibid.

¹⁶¹ Article 1-(3), Covenant on Civil and Political Rights (ICCPR), 1966

¹⁶² United republic of Tanzania, National Plan of Action 2013-2017, (2013), Ministry of Constitution and Legal Affairs, Dar es Salaam, Tanzania.

¹⁶³ Article 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) 1966, (ICESCR),

primary education, accessible secondary education through progressive introduction, equal access to higher education based on capacity, measures to improve literacy, and quality improvement.¹⁶⁴ The ICESCR came into effect on January 3, 1976, with 172 party members and 71 signatures.¹⁶⁵

The Covenant mandates states to exercise their rights without discrimination, including the right to education. This Comprehensive recommendation recognizes everyone's right to education and requires free, universal primary education. It imposes three levels of obligations on states to respect, protect, and fulfill the right to education, including entitlement to primary, secondary, and postsecondary education rights. This comprehensive recommendation emphasizes the importance of universal primary education.¹⁶⁶ Consequently the Convention provides that, Primary education is mandatory and free, while secondary education is accessible through appropriate means, while Higher education should be provided equally to all, contingent on ability and accessible based on capacity,¹⁶⁷ since the right to education is a fundamental human right that ensures non-discrimination and equal protection for individuals with physical disabilities.¹⁶⁸ Further, the General Comment No. 5 emphasizes the importance of integrated education for human personality and dignity. The right to education consists of four key elements: availability, accessibility, acceptability, and adaptability.

Read also Article 25 of the UDHR, 1948.

¹⁶⁴ Article 13 of the International Covenant on Economic, Social and Cultural Rights, 1966.

¹⁶⁶ General Comments No.13 on the Covenant on Economic, Social and Cultural Rights (ICESC)

¹⁶⁷ Article 13- (2) (a) (b) (c) and 14-2(b) of the International Covenant on Economic, Social and Cultural Rights (ICCPR), 1966.

¹⁶⁸ General Comment No.05, on the Convention on the Rights to Education for individuals with Disability (CRPD), 2006.

Availability refers to the number of functioning educational institutions and programs within a State party's jurisdiction, accessibility requires accessibility without discrimination, and adaptability means education must be flexible to respond to changing societies and communities.¹⁶⁹ The Covenant mandates states to provide basic necessities, including education, without discrimination, promote inclusive schools, compulsory primary education, and equal access to higher education, in line with the Universal Declaration of Human Rights and the UN Declaration on the Rights of Persons with Disability.

3.1.7 The Convention on the Elimination of All Forms of Racial Discrimination (CERD).

The Convention on the Elimination of Racial Discrimination in Education (CERD) was adopted by the United Nations General Assembly in 1965 and ratified by Tanzania in 1972.¹⁷⁰ It reaffirms dignity and equality, citing the Charter of the United Nations and the Universal Declaration of Human Rights.¹⁷¹ The CERD mandates member states to eliminate all forms of racial discrimination from their national policies and prevent acts or practices against individuals, groups, or institutions. It requires public authorities and institutions to comply with this obligation, and state parties must not support or sponsor

¹⁶⁹ General Comment No.05, on the Convention on the Rights to Education for individuals with Disability (CRPD), 2006.

¹⁷⁰ The Convention on Elimination of All Forms of Racial Discrimination (CERD). (1969 United Nations, Treaty Series, vol. 660, p. 195.

¹⁷¹ The Preamble, Ibid.

racial discrimination. Tanzania, as a member state, has obligations to abide with this convention through appropriate legislation and measures.¹⁷²

3.1.8 Convention on the Elimination of Discrimination in Education (CEDAW), 1979.

CEDAW was adopted by the United Nations General Assembly in 1979 and became an International treaty in 1981. It affirms women's equal rights to education and prohibits non-discrimination in education, employment, and economic and social activities.¹⁷³ The convention defines discrimination against women and sets an agenda for national action.¹⁷⁴ Tanzania signed and ratified the Convention in 1985, but has not yet ratified its optional protocol allowing individuals to file complaints against state violations.¹⁷⁵ The CEDAW mandates States Parties to eliminate discrimination against women and girls, and supports those with physical disabilities.¹⁷⁶ Tanzania's government is committed to protecting women's rights through its Constitution and ensuring their freedom from discrimination.¹⁷⁷

3.1.9 UN Convention on the Rights of the Child (1989).

It was adopted in 1989 as the most universally accepted human rights instrument, ratified by every country in the world. It recognizes the unique rights of children,

¹⁷² Article 2(1) (a), (b), Convention on the Elimination of Discrimination in Education (CEDAW), available

At [CEDAW.pdf](#), Accessed on 28.07.2025

¹⁷³ Articles (10), (11) and (13) Convention on the Elimination of Discrimination in Education (CEDAW).

¹⁷⁴ Articles 2 (f) and 5 (a), Ibid.

¹⁷⁵ UN General Assembly (1979) Convention on Elimination on the All Forms of Discrimination against Women, United Nations treaty series, Vol. 1249.

¹⁷⁶ Article (1)(2)(5) UN Convention on the Rights of the Child (1989)

¹⁷⁷ Articles 12 and 13 of the Constitution of the United Republic of Tanzania (Cap 2, R.E 2008)

including education, play, supportive environments, and healthcare.¹⁷⁸ Tanzania became a signatory in 1990 and ratified it in 1990. The CRC enshrines the right to education as a basic right of the child, especially for children with disabilities, including those with physical impairments.¹⁷⁹ The state is required to make primary education compulsory and available to all, while encouraging the development of secondary education and respecting human rights and fundamental freedoms.¹⁸⁰

Therefore, CRC prioritizes the best interests of children, ensuring equal access to education and promoting their well-being and development.¹⁸¹ It emphasizes the need for special care and assistance for children with disabilities; also state parties are responsible to provide necessary assistance.¹⁸² The articles further advocates for effective access to education, inclusive education, and respect for human rights, cultural identity, language, and values. Tanzania has taken steps to respect and protect children's rights, enacting the Law of the Child Act in 2009, which establishes rights, streamlines the legal system, and provides guidelines for child welfare and custody.¹⁸³

3.1.9.2 States Obligations Implementation Measures under CRC.

The CRC ensures the right to education for children with physical disabilities, promoting quality and enabling their full potential. It encourages inclusive policies, including

¹⁷⁸The United Nations General Assembly, the Declaration of the Rights of the Child of 1959.

¹⁷⁹ Article (23) of the Convention on the Rights of the Child, 1990.

¹⁸⁰ Articles 28 and 29 of the UN Convention on the Rights of the Child, (1989)

¹⁸¹ Article 3, Ibid.

¹⁸² Article (23),(28)and (29) of the UN Convention on the Rights of the Child (1989)

¹⁸³The Convention on the Rights of the Child, (CRC): General Comment No.09 on the Rights of Persons with Disabilities, 2006, available at, <https://www.right-to-education.org/resource/crc-general-comment-9-rights-children-disabilities>, accessed on August, 2024.

physical accessibility; teacher training, and appropriate materials,¹⁸⁴ also adequate resources are allocated for specialized programs. Therefore, Child rights are to be implemented through legislative, administrative, and national laws, ensuring non-discrimination. Further, states are obliged to make Primary education is compulsory, secondary education is encouraged, and higher education accessible. Thus, Tanzania government has made commitment by ratifying the Optional Protocols to the CRC, and must submit periodic reports to the UN treaty body.

3.1.10 The World Declaration on Education for All (EFA).

Over 40 years ago, the Universal Declaration of Human Rights declared to everyone right to education.¹⁸⁵ Despite of these global efforts, EFA, established in 1990 at the Jomtien World Conference on Education, advocates for cooperation and treaties protecting education rights for disabled individuals. The World Declaration on Education for All mandates basic education underscored the importance of education for all to be provided to all children, youth, and adults, aiming for universal access and equity,¹⁸⁶ provided under the 1948 Universal Declaration of Human Rights guarantees every child's right to education, deeming it a fundamental human right.¹⁸⁷

3.1.11 The Salamanca World Conference on Special Education in 1994

The 1948 Universal Declaration of Human Rights enshrined the right to education for every individual, which was reaffirmed by the World Declaration on Education for All

¹⁸⁴ Article 12, available at, <https://participation.cbm.org/why/international-frameworks/crc>.

¹⁸⁵ Article XIII, of the World Declarations on Education for All (EFA), 1990.

¹⁸⁶ Article I of the World Declarations on Education for All (EFA), 1990.

¹⁸⁷ Article III, Convention on the Rights of the Child (CRC), 1989.

in 1990. This declaration ensures that every child, regardless of individual differences, has the right to education.¹⁸⁸ It also asserts that every person with a disability has the right to express their wishes regarding their education.¹⁸⁹

The Education for All Statement is a commitment to ensure equal opportunities for children, youth, and adults with disabilities in primary, secondary, and tertiary education.¹⁹⁰ It emphasizes the need for inclusive schools in countries with few or no special schools and aims to build solidarity between children with special needs and their peers.¹⁹¹ The statement emphasizes the importance of providing education for all within the regular education system, ensuring access to regular schools for all children, young people, and adults.¹⁹² In 1994, over 300 individuals from 25 international organizations and 92 governments convened in Salamanca, Spain, to promote inclusive education and help all children, including those with special needs.¹⁹³ The Salamanca Declaration on Principles, Policy, and Practice in Special Needs Education and a Framework for Action were adopted as a result. The statement emphasizes the importance of education for everyone, particularly the weak and underprivileged, and calls for a child-centered pedagogy to accommodate those with special educational

¹⁸⁸ Preamble of the Salamanca Statement and Framework for Action on Special Needs Education, the World Conference on Special Needs Education: Access and Quality, Salamanca, Spain, 7-10 June 1994.

¹⁸⁹ Article 1 Framework for Action on Special Needs Education, 1994.

¹⁹⁰ Ibid.

¹⁹¹ Article 15 Ibid, states that, Regular schools with this inclusive orientation are the most effective means of combating discriminatory , building an inclusive society and achieving education for all; moreover, this provide an effective education to the majority of children and improve the efficiency and ultimately the cost-e effectiveness of the entire education system.

¹⁹² <https://www.csie.org.uk/inclusion/unesco-salamanca.shtml>, last up to date 2020.

¹⁹³ UNESCO, (1994), The Salamanca Statement and Framework for Action on Special needs Education: World Conference on special needs education: Access and quality, Salamanca, Spain, (ED-94/WS/18), UNESCO.

needs.¹⁹⁴ The Salamanca Framework has been strengthening and promoting children's right to education for the past 20 years, with an emphasis on inclusive education and special needs.¹⁹⁵ Perhaps, In 1994, the Tanzanian Government ratified the Salamanca Statement with emphasizes the need to provide children with special needs basic education and sees this as an indispensable step to reach the goals set at the first Education For All Conference in Jomtien 1990.

3.1.12 UN Convention on the Rights of Persons with Disabilities (CRPD)

The Convention on the Rights of Persons with Disabilities (CRPD) is the only United Nations human rights instrument that comprehensively protects the rights of persons with disabilities, including the right to education. It affirms education as a fundamental human right, protecting the dignity and rights of persons with disabilities.¹⁹⁶ The CRPD explicitly considers failure to provide reasonable accommodation as a form of disability discrimination. The Convention upholds non-discrimination and acknowledges the equal right of persons with disabilities to live independently in the community.¹⁹⁷ It aims to ensure the full enjoyment of human rights and fundamental freedoms for all disabled

¹⁹⁴ Article (2)(3) UNESCO, (1994), The Salamanca Statement and Framework for Action on Special needs Education: World Conference on special needs education: Access and quality, Salamanca, Spain, (ED-94/WS/18), UNESCO, available at, <http://unesdoc.unesco.org/images/0009/000984/098427eo.pdf>

¹⁹⁵ UNESCO, (1994), The Salamanca Statement and Framework for Action on Special needs Education: World Conference on special needs education: Access and quality, Salamanca, Spain, (ED-94/WS/18), UNESCO.

¹⁹⁶ Article 1 of the United Nations Convention on the Rights of Persons with Disabilities (CRPD) 2006

¹⁹⁷ Article 19 of the United Nations, (2006) Convention on the Rights of Persons with Disabilities, *Treaty Series*, 2515, 3

individuals, respecting their inherent dignity. States Parties are required to provide reasonable accommodation to promote equality and eliminate discrimination.¹⁹⁸

The Supreme Court in the United States and the European Court of Human Rights have both ruled that laws creating separate schools are unconstitutional and violate the fundamental right of all to equality.¹⁹⁹ The US Supreme Court rejected the doctrine of 'separate but equal', stating that separate educational facilities are inherently unequal. The European Court of Human Rights has also held that maintaining separate schools and programmes is discriminatory, including based on disability. To realize the right to live independently and be included in the community, states must implement effective measures to facilitate the full enjoyment of this right.²⁰⁰

However, (CRPD) also requires States parties to provide equal access to mainstream schools for students with disabilities, including those with visible, invisible disabilities and those experiencing multiple discrimination,²⁰¹ since discriminatory direct contravention of the Convention's objectives requiring States parties to ensure reasonable accommodation.²⁰²

Moreover, inclusive education on an equal basis with others in their communities should be maintained by providing reasonable accommodation and developing new inclusive

¹⁹⁸ Article 5-(2) of the UN Convention on the Rights of Persons with Disabilities, 2006.

¹⁹⁹ Article 6 of the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD), 2006.

²⁰⁰ Article 24, Ibid.

²⁰¹ Articles 5 and 24, of the United Nations Convention on the Rights of Persons with Disabilities, (UCRPD), 2006.

²⁰² Article 5(1) and 5(3), Ibid.

settings, ensuring persons with disabilities are not excluded from free primary or secondary education based on disability, since Standardized assessment systems that exclude students with disabilities are discriminatory and in contravention of these obligations.²⁰³ Disabled People International coined the phrase ‘nothing about us without us’ in developing self-advocacy which later became the motto of the Convention of the Rights of Persons with Disabilities.

Additionaly, by 2006 The (CRPD) was drafted in which ratified by 185 nations in 2007 and come in force on May 3, 2008.²⁰⁴It supports free primary, secondary, and higher education without prejudice and places a strong emphasis on equality, nondiscrimination, life, liberty, security, and education under article 24.²⁰⁵ However on the same year, Tanzania signed the Convention on the Rights of Persons with Disabilities and its Protocol in 2008, which was ratified in 2009. The Convention obligates Tanzania among of member states to provide a framework that guarantee equitable access to the physical environment transportation, information, and communications for people with disabilities, acknowledging them as social welfare issues and human rights. Following ratification, the Persons with Disabilities Act No. 9 of 2010 was passed, regulating people with disabilities' rights and localizing the right to education under Sections 27(1), (34) and (35).

²⁰³ Article 24 (2) (b) the United Nations Convention on the Rights of Persons with Disabilities, (CRPD), 2006.

²⁰⁴ Oyaro, Louis O. "Africa at Crossroads: The United Nations Convention on the Rights of Persons with Disabilities." *American University International Law Review* 30 no. 2 (2015): 347-377.

²⁰⁵ The Convention of the Rights of Persons with Disabilities(CRPD) 2006

3.1.12.1 General Obligations of States Parties under the Convention relating to Non- Discrimination and Equality.

States parties are obligated to protect the rights of persons with disabilities from non-discrimination and must avoid actions that discriminate against them, such as modifying or abolishing existing laws, regulations, customs, and practices, this includes segregated education laws and policies, which direct contravention of the objectives of the Convention Policies.²⁰⁶ Moreover, member States must remove all discriminatory barriers to inclusive education and ensure equal treatment in their communities.²⁰⁷ This will be achieved by providing reasonable accommodation and developing inclusive settings based on universal design.

3.1.12.2 Dakar Framework of Action (UNESCO), 2000.

This framework was to assess countries from six Regions across the globe on the reasons behind hence it was reported that, more than 113 million children were not accessing Primary education, and 21 Journal of International Special Needs Education 880 million adults were illiterate. This Framework of Action was specifically to address the global issue of education for all for over 113 million children not accessing primary education and 880 million adults being illiterate. Therefore member nations were called upon to ensure the achievement of EFA goals, including free primary education, life skills promotion, adult literacy increase, and improved education quality. Tanzania being a party state has an international responsibility to work towards these goals, aligning

²⁰⁶ Article 24 (2) (b), Ibid.

²⁰⁷ Article 5 and 24 and Article 5 (1) The United Nations Convention on the Rights of Persons with Disabilities

with the Incheon Declaration, which reaffirmed previous efforts towards inclusive and equitable quality education and lifelong learning.²⁰⁸

3.1.12.3 Millennium Development Goals for 2015 (2000)

In 2000, 147 heads of state and government met in New York to halve extreme poverty by 2015. This limited access to resources, including education, and led to the development of eight Millennium Development Goals (MDGs), including universal primary education. However, these goals are ineffective unless realistic first steps are taken to provide all children with access to education. The 2010 progress report on the Millennium Development Goals highlighted the link between disability and marginalization in education, with children with disabilities representing the majority of excluded groups. UNESCO reported that over 90% of children with disabilities in Africa are denied the right to primary education, and they are more likely to drop out of school and achieve less positive learning outcomes.

Other Instruments includes: The European Convention for the Protection of Human Rights and Fundamental Freedoms prohibits discrimination in education and other areas. It mandates states to provide full educational services for persons with disabilities, integrating them into the educational system and promoting vocational training and apprenticeship. The eradication of illiteracy is a binding obligation, and everyone has the right to education. States must guarantee free education at all primary and basic levels,

²⁰⁸ Incheon Declaration (UNESCO, 2015)

and all forms of primary education must be compulsory and accessible without discrimination.

3.2 At Regional Level.

Regional instruments in Africa emphasize the right to education for individuals with physical disabilities, emphasizing inclusivity, non-discrimination, and removing barriers. Effective implementation requires collaboration between African states, civil society, and international partners to create inclusive educational environments. Regional frameworks like the African Charter on Human and Peoples' Rights, the Plan of Action for the African decade of Persons with Disabilities, and the EAC Policy on Persons with Disabilities reinforce international standards in specific geographical contexts. Tanzania is a signatory to several regional instruments, emphasizing the importance of inclusivity, non-discrimination, and removing barriers to ensure quality education for all individuals, regardless of physical ability.^{3.2.1} African Charter on Human and Peoples' Rights (ACHPR), 1981.

Tanzania is a member to this charter; it recognizes the principal of equal before the law. Since all Human beings are inviolable and shall be entitled to respect for his life and the integrity of his person. No one may be arbitrarily deprived of this right. However, the charter provides for the right of education,²⁰⁹ as it is guaranteed to all individuals,

²⁰⁹ Article 3, 17, 19 and 17 of the African Charter on People and Human Rights (AFCHPR). It states “Every individual shall be entitled to equal protection of the law and shall have the right to education...”

including vulnerable groups and prohibits discrimination based on sex or childbirth²¹⁰. While the ACHPR does not specifically address education for individuals with disabilities, it provides a general framework for human rights that supports the inclusion of all people, including those with disabilities “such as” and “other status,” suggests a more objective rather than subjective standard that includes disability.

3.2.1 Protocol to the African Charter on Human and Peoples' Rights on the Rights of Persons with Disabilities in Africa (African Disability Protocol).

The African Disability Protocol, part of the African Charter on Human and Peoples' Rights, aims to ensure the rights of persons with disabilities in Africa. Adopted in 2018, it mandates state parties to ensure inclusive education at all levels and provide reasonable accommodations to facilitate access. The protocol focuses on inclusive education and the elimination of barriers, emphasizing the right to education for all, including those with physical disabilities. Tanzania, a member state, is not yet in force due to the 15 ratifications required for it to become effective.

3.2.2 The African Charter on the Rights and Welfare of the Child.

The ACRWC, adopted in 1990, guarantees the right to education for every child, including those with disabilities. It mandates member states to provide special measures of protection and accessibility in public places for handicapped children. The CRWC also urges state parties to take special measures for female, gifted, and disadvantaged

²¹⁰ Article 28, AFCHPR, also available at <file:///C:/Users/USER/Downloads/AFRICAN%20CHARTER%20%20ON%20HUMAN%20A,accessed> on June 2024.

children to ensure equal access to education. Member states are tasked with addressing education barriers faced by children with disabilities and ensuring equal access to education.²¹¹ Regional plans of action outline further commitments to ensure universal access to quality basic education for both girls and boys, focusing on reducing disparities and addressing the rights of marginalized children, including those with disabilities.²¹²

3.2.2.1 African Committee on the Rights and Welfare of the Child (ACRWC)

This is a body established in 2001 by the African Union to monitor the implementation of the African Charter on the Rights and Welfare of the Child between member states. It is the first and only child rights treaty body globally with the competence to receive complaints against states.²¹³ Consequently, African committee of experts on the rights and welfare of the child (ACERWC) has addressed a number of cases relating to the right to education for children with disabilities which highlights systematic issues like discrimination in where children with disabilities face barriers to accessing schools and education opportunities on par with their peers. Lack of access to appropriate facilities, and inadequate support services.

Recommendations has been upheld to governments and other stake holders to improve the situation by implementing national policies and strategies that promotes the inclusion

²¹¹ Article 11- (3), Article 28, AFCHPR, also available at <file:///C:/Users/USER/Downloads/AFRICAN%20CHARTER%20ON%20HUMAN%20A.accessed> on June 2024.

²¹² The African Charter on the Rights and Welfare of the Child, 1990.

²¹³ African Union, available at, <https://au.int>, accessed on 28.07.2025

of children with disabilities in education such as Tanzania National Disabilities Mainstreaming Strategy of 2001. Further, it has urged state members to ratify and implement the protocol to the African charter on human and people's rights on the rights of persons with disabilities and other relevant legal frameworks to strengthen the protection of children with disabilities.²¹⁴

Consequently, the committees has yet received case concerning denial of persons / children with disabilities right to education in Tanzania instead it has provided judgment on pregnant girls and adolescent mothers being excluded from accessing public education which is seen as violation of the right to education.²¹⁵

Therefore the committee continues to advocate for inclusive policies and practices to ensure that all children have access to quality education and other essential needs.

3.2.3 Continental Plan of Action for the African Decade of Persons with Disabilities (1999-2009 and 2010-2019)

Both Plan of Action for the Second Decade of Education (2006-2015) In line with the Continental Plan of Action on the African Decade of Persons with Disabilities (1999-2009), aims to protect the rights of vulnerable persons, including children with disabilities. AU Member States are expected to improve access to rehabilitation, education, training, employment, sports, cultural and physical environment, and ensure inclusive education for boys and girls with disabilities. The plan provides a strategic

²¹⁴ ACERWC available at, <https://www.acerwc.africa>, accessed on 28.07.2025

²¹⁵ International disability alliance, <https://www.internationaldisabilityalliance>

framework for African countries to enhance the inclusion of persons with disabilities in education and other sectors. Key objectives include promoting inclusive education, removing barriers, and providing reasonable accommodations in educational settings. The African Decade aimed to promote laws and initiatives allowing people with disabilities to fully participate in society, assist community-based service delivery, and implement the United Nations Standard Rules on the Equalization of Opportunities for People with Disabilities.

3.2.4 The African Youth Charter 2006

The African Youth Charter is a strategic framework for youth empowerment and development in Africa, addressing key issues such as education, national youth policy, peace and security, law enforcement, youth in the Diaspora, and youth with disabilities.²¹⁶ It acknowledges the right of mentally and physically challenged youth (ages 15-35 years) to special care and ensures access to quality education.²¹⁷ The Charter calls for state parties to improve accessibility and ensure every young person has the right to good quality education ‘Agenda 2063: The Africa We Want’.²¹⁸ Youth rights are guaranteed under international and regional human rights instruments, including the Universal Declaration of Human Rights (UDHR) of 1948.²¹⁹ Tanzania has implemented measures to address youth challenges, including the National Accelerated Action and

²¹⁶ Article 13, African Charter on Youth, 2006.

²¹⁷ Article (24) of African Charter on Youth, 2006, available at <https://esaro.unfpa.org/en/publications/african-youth-charter.,last> up to date on 2012. accessed on 28.07.2025

²¹⁸ <https://esaro.unfpa.org/en/publications/african-youth-charter>

²¹⁹ The International Covenant on Civil and political Rights (ICCPR) of 1966, the African Charter on Human and Peoples Rights (Banjul Charter) of 1981, and the African Charter on the Rights and Welfare of the Child (ACRWC) of 1990

Investment Agenda for Adolescent Health and Wellbeing in 2021. Regional agreements like the European Convention on Human Rights and the African Charter on Human and Peoples' Rights address regional nuances and challenges.

3.3 Conclusion.

This chapter has explored the International and Regional frameworks for protecting the right to education for individuals with physical disabilities, focusing on eliminating barriers and promoting accessibility. It has also critically examined standards implemented by these instruments, including the Universal Declaration of Human Rights, which serves as a legitimacy test for member states' commitment to inclusive education. However, Despite Tanzania's ratification of major International instruments, it has not ratified the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights and the Optional Protocol to the Convention on the Rights of the Child, which allows individuals to make formal complaints to the relevant UN treaty body. This has led to Tanzania struggling with resources, inadequate infrastructure, insufficient teacher training, and discriminatory attitudes. To improve these frameworks, inclusive educational environments and strong legislative frameworks must be created in domestic laws.

CHAPTER FOUR

THE KENYAN LEGISLATIVE FRAMEWORK IN ENSURING THE RIGHT TO EDUCATION FOR INDIVIDUALS WITH PHYSICAL DISABILITIES

4.0 Introduction

Chapter three has explored the international framework on the right to education for an individual with physical disabilities in which obligations has been has been imposed to member states in compliance with. Kenya being a member of the UN, African Union, as well as East African Community , has also signed and ratified several International treaties and legal frameworks that promote inclusive education for children with

physical disabilities including the Universal Declaration of Human Rights, the International Covenant on Economic, Social, and Cultural Rights (ICESCR), the Convention on the Rights of the Child (CRC), and the United Nations Standard Rules on Equalization of Opportunities for Persons with Disabilities (UNSREOPD).

Therefore, Kenya's commitment to inclusive education and promoting the rights of persons with disabilities was solidified in 2008 by ratifying the United Nations Convention on the Rights of Persons with Disabilities (CRPD). Consequently, These International instruments have significantly influenced Kenya's national policy, underscoring education as a fundamental human right, as well as adherence to these international standards which mandates free primary education and accessible secondary and higher education based on capacity, and the CRC, which emphasizes the educational rights of children, including those with physical disabilities, has significantly influenced its approach to education.²²⁰ Therefore, Kenya has aligned its policies with global initiatives like the Education for All (EFA) goals and the Salamanca Statement, aiming to provide quality education for all children, including those with disabilities. This adherence to international human rights standards demonstrates Kenya's dedication to providing quality education for all.²²¹

²²⁰ Article 13-(1) of the International Covenant on Economic, Social and Cultural Rights (ICESCR) 1966 142 NGEK, (2016), access to basic education by children with disability in Kenya... National Gender and Equality Commission, Nairobi, Kenya.

²²¹ Article 13-(1) of the International Covenant on Economic, Social and Cultural Rights (ICESCR) 1966.

However, Kenya is among of East African countries which is proclaimed to be a Sovereign Republic that upholds the multiparty democratic system of government established on the country's core ideals.²²² It gained independence in 1963 from British colonial Administration, whereby English and Kiswahili are the official languages of the Republic, with Kiswahili serving as the national language.²²³ Therefore, the Bill of Rights serves as the foundation for social, economic, and cultural policies and is an essential component of Kenya's democratic state.²²⁴ International, Regional, and National legal frameworks protect the right to education which is a fundamental human right. In addition, education is essential for social and personal growth as it empowers people of all backgrounds, including those with physical limitations, and promotes equality.

Moreover, this party outlines the extent to which Kenya has undergone legislative measure on the right to education for individuals with physical disabilities. Therefore, domestic laws serve as the foundation for Kenya's legal framework granting people with physical impairments the access to an education and advancing this right compared to Tanzania mainland.

4.1 Historical Background

The right to education for individuals with Physical Disabilities in Kenya dates back to pre-colonial times, when there were no official legal protections for education,

²²² Article 4-(1) and (2) of the Kenya Constitution, 2010

²²³ Article 7-(1)(2), Ibid

²²⁴ Article 19-(1), Ibid.

especially for those who were physically unable. Therefore, Education was mostly informal, with elders passing knowledge and skills to younger community members through communal involvement. This unofficial, community-based education focused on practical skills and cultural understanding, rather than methodical teaching. Physical impairments were often misinterpreted and stigmatized, leading to social marginalization and low community involvement. Instruction could be modified to meet specific requirements, but it was only available verbally.²²⁵

Therefore, Kenya's efforts to support disabled individuals through education were influenced by humanitarian and religious concerns. In the 1950s, religious and secular groups like the Salvation Army, Red Cross Society, and Round Tables International established programs for those with physical impairments. The British Red Cross Society established the Dagoretti Children's Center in Nairobi and the Association for the Physically Disabled in Kenya (APDK). However, these religious institutions lacked professional staff, structure, a set curriculum, and legal and policy rules, necessitating government action to coordinate and provide supervision.²²⁶

Additionally, the Kenya's legal and educational framework for those with physical disabilities was underdeveloped before independence. Elites were primarily supported by education policies, limiting opportunities for underprivileged groups. The Colonial

²²⁵ Gebrekidan, F. N. (2012). Disability Rights Activism in Kenya, 1959-1964: History from Below. *African Studies Review*, 55(3), 103–122. <http://www.jstor.org/stable/43904850> accessed on 28.07.2025

²²⁶ Gebrekidan, F. N. (2012). Disability Rights Activism in Kenya, 1959-1964: History from Below. *African Studies Review*, 55(3), 103–122. <http://www.jstor.org/stable/43904850>

government's demands significantly influenced the educational system, with no specific legislation or special education for disabled individuals. Numerous taskforces and commissions have been established to improve special needs education in Kenya. The Ominde Commission in 1964 was the first national report with education-related recommendations, focusing on equal education for all children and establishing a separate school for children with impairments. However, the government did not participate in these recommendations.

The Koech Commission, formed after the 8.4.4 educational system, released a Report in 1999, recommending inclusive education. However, the Education Act (1968) in Kenya did not explicitly guarantee the right to education as a fundamental human right by 1998. Therefore, Kenya Ministry of Education's 1995 Manual, The Children Act (2001), Persons with Disabilities Act (2003), and Sessional Paper No. 1 of 2005 on Education, Training Policy Pre-2010 all Address special education services, but the legal framework remains inadequate in ensuring equitable access to quality education for marginalized groups.

4.2 Regional Obligations.

Notably, Kenya's commitment to education is evident through its participation in International Conventions and its support for Regional human rights instruments like the United Nations Charter 1945, African Charter on Human and Peoples' Rights (ACHPR) and the African Charter on the Rights and Welfare of the Child (ACRWC).²²⁷ Moreover,

²²⁷ NGEC, (2016), access to basic education by children with disability in Kenya... National Gender and Equality Commission, Nairobi, Kenya.

Article 46-(1) also mandates the establishment of education assessment and resource centers (EARCs) in every county. However, the Act does not explicitly mention persons with disabilities, stating that no pupil shall be refused admission or excluded from a school on grounds of sex, race, or color, but excludes disability as a ground for no admission.

4.3 National Laws and Policies.

In Kenya by the year 1999, there were 22,000 learners with special needs enrolled in special schools, units, and integrated programs. The number increased to 45,000 in 2008, with over 1,100 units and 100 public special schools. The number of special needs institutions has increased to 3,464, with 2,713 integrated institutions and 751 special schools.²²⁸ Therefore, by the 2008 Kenya national survey revealed 1.3 million people with disabilities in the country with 39% attending mainstream primary schools and 9% attending high school. Also, the 2009 census showed a 3.5% disability rate, with 647,689 males and 682,623 females. Further, According to the 2019 census, 2.5% of women and 1.9% of men are disabled 0.9 million Kenyans, or 2.2% of the population. In contrast, the 2009 census revealed that 3.4% of men and 3.5% of women were disabled.²²⁹

²²⁸ Mwoma, T, Education for Children with Special Needs in Kenya: A Review of related Literature,8-(28), 188 Journal of Education and Practice, 2017, 8-(28), <https://www.iiste.org/Journals/index.php/JEP/article/view/XXXX> (replace " XXXX& quot; with the appropriate article ID if available).

²²⁹The 2019, Kenya Housing and Population Census Report

Notably the government aims to provide free and compulsory basic education for every child under 18, in line with the country's new constitution and Kenya Vision 2030. The Department of Education prioritizes education as a key component of human and economic development, focusing on knowledge acquisition, skills development, and lifelong learning. Kenya has implemented legislative instruments to ensure inclusive education for children with disabilities.²³⁰

The Ministry of Education Science and Technology has developed a policy and legislative framework for education and training to realign human capital development needs with the Constitution and Kenya Vision 2030. Additionally, The Kenyan government is still implementing a policy aimed at achieving its international commitments, particularly the Millennium Development Goals (MDGs) and the Education for All initiative. The policy has provided an all-inclusive education to all citizens, fostering socio economic development and nation prosperity. The policy also focuses to define Kenya's political, social, and economic aspirations by 2030 and beyond, enabling the country to effectively address changing socio-economic and political needs and expectations. The guiding philosophy of the reform efforts on education is centered on a stable and cohesive nation that supports socio- economic development and prosperity.

²³⁰ Ibid.

4.3.1 The Constitution of Kenya 2010.

The Constitution sets the overall policy and legislative framework on the rights to education of PWDs in Kenya,²³¹ which has now been aligned to the Convention on the Rights of Persons with Disabilities .It forbids discrimination on the basis of disability and ensures that everyone, including people with disabilities (PWDs), has the right to free and obligatory basic education.²³²

Furthermore, the government is required under the Constitution to make sure that they obtain the necessary training and expertise.²³³ As a result, the 2010 Constitution represented a dramatic change by clearly acknowledging the right to education as a basic human right. As a result, the constitution's guarantee of the right to education for all people expressly includes provisions for the rights of people with disabilities, such as access to facilities and educational opportunities that are integrated into society. Prior to the 2010 Constitution, Kenya's right to education was addressed by a number of laws and governmental initiatives, but it was not formally acknowledged as a basic human right. Therefore, the right to education for persons with disabilities in Kenya is explicitly mentioned in the constitution,²³⁴ which entitles every child to free and compulsory basic education.

²³¹Article 53- (1) (b) The Constitution of Kenya 2010, which states that every child has a right to free and compulsory basic.

²³² Ibid.

²³³Article 55 (a), Ibid.

²³⁴Article 53- (1) (b) the Constitution of Kenya 2010.

4.3.2 Persons with Disabilities Act (2003).

The Persons with Disabilities Act of 2003 is a comprehensive legislation that aims to protect the rights of persons with disabilities (PWDs), including their right to education. The Act mandates the government to make educational institutions accessible and accommodative for PWDs, and to provide special education and vocational training programs. The word “disability” has been defined to mean:

“a physical, sensory, mental or other impairment, including any visual, hearing, learning or physical incapability, which impacts adversely on social, economic or environmental participation.”

It provides free and compulsory basic education for all children in Kenya, including those with physical disabilities. The Act calls for inclusive education and reasonable accommodation for learners with special needs. Public institutions are required to ensure their facilities are accessible to PWDs and to provide special education and vocational training programs. Despite significant Efforts in providing policy and legal frameworks for the education of children with disabilities, more work is needed to ensure their rights are upheld.

4.3.2.1 National Council for Persons with Disabilities (NCPD).

The council is Semi-autonomous government Agency s also was established in 2004 following the enactment of the Person with Disabilities Act of 2003 which is under the Ministry of Gender, Children and social development. Advocating for inclusive policies, monitoring implementations of inclusive education policies and legislations by

providing support services. It works to ensure that all Learners including those with Disabilities have access to quality education on equal bases with others. However the persons with disabilities Act 2003 has been recently repealed to aligned with the CRPD as well as the Constitution to promote right based approach to disability inclusion.²³⁵ It recognizes the needs for reasonable accommodation and affirmative action measures in education, For instance learners with disabilities are provided with extra time during examination by Kenya national examination council (KNEC).

4.3.3 Children Act, No. 29 (Cap 141, R.E 2022).

The 2010 Constitution amendment had jurisprudential effect to Kenyan Children's Act, 2001 that had explicitly sought to give domestic legal effect to CRC and the African Children's Charter. The Children Act, which granted children the right to education, aimed to ensure their welfare. However, it focused on children's welfare rather than a broad human rights approach. The Children's Act, 2001 which domesticates the CRC, reiterates the right to education for all children, emphasizing nondiscrimination in access to education and the entitlement to free and compulsory basic education. The Act specifically references disability, stating that disabled children should be treated with dignity, provided appropriate education and training, and adduced cost whenever possible.²³⁶

²³⁵ Enableme.ke, available at <https://enableme.ke>, accessed on.....

²³⁶ G.O. Odongo 'The post-2010 Jurisprudence on children's rights under the Kenyan Constitution' (2022) 22 African Human Rights Law Journal 426-450 <http://dx.doi.org/10.17159/1996-2096/2022/v22n2a5>, available at <https://www.saflii.org/za/journals/AHRLJ/2022/19.pdf> accessed on 28.07.2025

The Children's Act, 2001 has since been repealed and replaced by a new and more expansive Children's Act, 2022 that came into legal force on 26 July 2022. The 2022 Act was specifically informed by the need to give better legal effect to the provisions of the 2010 Constitution, and to keep need protection of children's rights (article 53). This is in keeping with Kenya's obligation under the 1989 UN Convention on the Rights of the Child (CRC) and the 1990 African Charter on the Rights and Welfare of the Child (African Children's Charter), to put in place legislative and other measures for the implementation of children's rights. However, the 2022 Child Act recognizes the right to education for individuals with physical disabilities in advanced way it also obliges the government to establish such institutions or facilities including child care facilities, health facilities and educational institutions as may be necessary to ensure the progressive realization of the right under this section.²³⁷

4.3.4 Basic Education Act No.14 of 2013, (Cap. 2, R.E 2014).

The Basic Education Act (2013) in Kenya aims to provide free and compulsory basic education to all children, including those with disabilities, by ensuring inclusivity and providing appropriate facilities and resources. The Act prohibits discrimination against children with disabilities in access to education and requires learning institutions to consider their special needs in entry requirements, pass marks, curricula, and examinations.²³⁸ The Act aims to increase access, enhance retention, improve the

²³⁷ Article 20-(2) (3) the Constitution of Kenya 2010.

²³⁸ Part IV and v of the Basic Education Act o.14 of 2013, (Cap. 2, R.E 2014).

quality and relevance of education, strengthen early identification and assessment, and ensure equal opportunities for children with disabilities.

By just creating special schools in which compel students with non- disabilities to join those school,, unsteady of creating inclusive classroom by joining disabled students with those impairment in the same class. This t is against the background of the new Constitution that the government of Kenya passed the Basic Education Act 14 of 2013 (the Act). The purpose of the Act is to implement article 53(b) of the Constitution by ensuring a free and compulsory education for all children in Kenya.

Not only does the Act recognize the importance of the right to a free basic education for all children with disabilities, but it specifically prohibits schools from denying admission to students with disabilities on the other hand, the Act authorizes the creation of a special public education system for students with disabilities. Therefore the Education Act provides provisions which creates discrimination, thus goes contrary to the convention on the rights of persons with Disabilities.²³⁹

For instance in the case of *HM v Sweden*²⁴⁰ and *DH v The Czech Republic*, the Court found indirect discrimination against Roma children in the Czech Republic. A series of tests were used to establish the intelligence and suitability of pupils in mainstream and special schools.²⁴¹ In a second case, *Orsus v Croatia*, the Court noted that the concept of indirect discrimination needs further development. The dissenting judges were critical of

²³⁹ Article 24 of the Convention on the Rights of Persons with Disabilities, (CRPD), 2006.

²⁴⁰ *HM v Sweden* (Communication no: 3/2011) CRPD/C/7/D/3/2011 (19 April 2012)

²⁴¹ <https://www.saflii.org/za/journals/ADRY/2014/2.html> accessed on 28.07.2025

the majority opinion for failing to offer ‘practical guidance on how to develop and apply the notion of indirect discrimination.

Indirect discrimination has also been defined as discrimination that occurs as the result of equal treatment. This means that a law may require children to be treated in the same way in attaining education but fails to ensure that children with disabilities receive the accommodations or modifications they may need in order to have the same access to education as non-disabled children. However, a court will likely find indirect discrimination only if there is no objective and reasonable justification for the treatment. The CRPD Committee has held, therefore, that the right not to be discriminated against ‘can be violated when states, without objective and reasonable justification, fail to treat differently persons whose situations are significantly different the context of education, reasonable accommodation means changes that a school must make to the building, programs or services that would enable a child with disability to attain education on an equal basis with his or her nondisabled peers.

4.4 Policies and Strategies.

4.4.1 Seasonal Paper No. 1 of 2005 on Education, Training and Research.

This policy document laid out the government's commitment to achieving Education for All (EFA) and the Millennium Development Goals (MDGs). It aimed to provide equitable access to quality education, including for marginalized groups such as children with disabilities.

4.4.2 The Kenya National Special Needs Education Policy Framework of 2009.

The National Education Sector Plan (2013–2018) calls for the review of Kenya's Special Needs Education Policy (2009) to ensure smooth progression for learners with disabilities across all education levels. Aligned with Kenya's Constitution, the Basic Education Act (2013), and Sustainable Development Goal 4, the policy promotes inclusive education, equal opportunities, and access for all learners with special needs. It also aims to eliminate discrimination in enrolment and retention. The policy encourages inclusive practices and the creation of special units within regular schools. Institutions like the Kenya Institute of Special Education (KISE) support this by training professionals to meet the educational needs of students with disabilities.

4.4.3 National Education Sector Strategic Plan (2018-2022).

This strategic plan emphasizes inclusive education and sets out goals for improving access to education for learners with disabilities. It includes initiatives to enhance infrastructure, train teachers, and provide learning materials for students with disabilities. This policy framework outlines the government's commitment to providing quality education for learners with special needs and disabilities. It includes strategies for inclusive education, early identification and assessment, and capacity building for teachers. The SNE policy is a notable endeavor by the Kenya government to domesticate the Salamanca Statement that urged all governments “to give the highest policy and budgetary priority to improve education services so that all children could be included regardless of differences or difficulties” (UNESCO, 1994). However, the SNE policy of

2009 has not provided adequate systems and facilities that respond to the challenges faced by children with disabilities.

4.5 Conclusion.

Kenya's legal framework is crucial in upholding the right to education for individuals with physical disabilities. The Constitution prohibits discrimination based on disability, and specific legislation, such as the Persons with Disabilities Act and the Basic Education Act, ensure free and compulsory basic education for all citizens. Kenya has adopted policies to enhance inclusive education, such as the National Special Needs Education Policy Framework and the Inclusive Education Policy. Therefore, the country's commitment to International Conventions aligns its efforts with global standards on inclusive education. However, challenges remain in implementing these provisions, such as inadequate funding, societal stigma, limited resources, and insufficient teacher training. Addressing these requires sustained government commitment, increased budget allocations for special education, and public awareness initiatives.

CHAPTER FIVE

**A COMPARATIVE ANALYSIS OF TANZANIA’S FRAMEWORK ON THE
RIGHT TO EDUCATION FOR INDIVIDUALS WITH PHYSICAL
DISABILITIES: INSIGHTS FROM KENYA**

5.0 Introduction

The right to education is a fundamental human right, but it is often hindered for individuals with physical disabilities due to legal, structural, and social barriers. Tanzania has committed to inclusive education through international agreements, policies, and legal frameworks, but the reality for these individuals often falls short due to gaps in implementation, insufficient resources, and limited public awareness. This study compares Tanzania's legal framework on the right to education for individuals with physical disabilities, using Kenya as a reference point. The research aims to identify potential areas for improvement in Tanzania's legal and policy frameworks and explore how Kenya's successes and challenges could inform Tanzania's strategies to enhance educational access and inclusivity for people with physical disabilities. Kenya has made significant strides in creating an inclusive education environment through progressive policies and reforms. This comparative approach provides valuable insights into how regional cooperation and shared experiences can lead to more effective educational policies for people with disabilities, ultimately contributing to a more inclusive society across East Africa.

5.1 Tanzania Legal Framework.

5.1.1 The Constitution of the United Republic of Tanzania 1977(Cap.2 R.E 2008).

The Constitution is the highest legislative norm, setting general principles for all other laws and policies. The right to education in the Constitution is not enforceable under the basic rights and duties.²⁴² Thus, this right is recognized under fundamental objectives and directives of the state policy,²⁴³ in the sense that, even if the state violates this rights person with physical disabilities this no room for redress.²⁴⁴ However, this Constitution also has not defined the word “disability” instead it gives a general term that a person with disability is included as all human being/ every person who should be recognized of his dignity.²⁴⁵

Therefore, despite Tanzanian Constitution to uphold principles like rule of law, human rights, equality before the law and eradicating injustice; discrimination has been observed in the realization and enforcement of the right to education,²⁴⁶ particularly for individuals with physical impairments. Due to the fact that, Tanzania Constitution just recognizes the right to education but do not categorize it as among of the basic fundamental human rights which could have been protected for every person especially those with disabilities. Thus once individuals right to education is infringed has no

²⁴² Article 30-(3) of the Constitution of the United Republic of Tanzania (Cap 2, R.E 2008) Read also section (4) of the Basic Rights and Duties Enforcement Act (BRADEA), Cap 3, R.E 2-019.

²⁴³ Article 11-(2) of The Constitution of the United Republic of Tanzania 1977(Cap.2 R.E 2008),defined in this text, that” every person has the right to access education and every citizen shall be free to pursue education in a field of his choice up to his merit and ability.”

²⁴⁴ Article 7-(2), of the Constitution of the United Republic of Tanzania 1977 (Cap.2 R.E 2008).

²⁴⁵ Article 12-(1) (2), Ibid.

²⁴⁶ Article (9), (13), Ibid.

power to seek for redress hence even the commission for human rights and good governance receives only complains in and conduct inquiry in relation to violation of human rights infringements.²⁴⁷

Therefore, the Constitution only stipulates the right to education as a matter of appreciation for international agreements, without safeguarding its enforceability as a fundamental human right, it under the Basic Rights and Duties Enforcement Act cannot enforce this right under provisions from articles 12-29 of the constitution as it is not authorized by any court to determine the act or omission of any person or court regarding the rights under this chapter. Thus renders it not enforceable in court not only for non-disabled individuals and those with physical impairments, is at risk of being rendered obsolete. From that view, the This lack of specific rights for persons with physical disabilities has led to discrimination and insufficient remedies for infringement of education rights due to lack of the basic learning needs, inaccessible physical infrastructures often prevent physical impairments from equal Opportunities to access education, perpetuating the issue of discrimination and limiting the rights of all individuals. Consequently, Tanzania Proposed Constitution of 2014 was launched by the National Assembly as a referendum in the year 2015 which was to come into effect in 2015, under this Constitution Review. The right to education is recognized as a human right under part.²⁴⁸

²⁴⁷ Article 130 of the Constitution of the United Republic of Tanzania of 1977 (Cap 2, R.E 2008).

²⁴⁸ According to Article 41 of Tanzania Proposed Constitution of 2014, read also Right to Education Project 2015, available at, https://www.right-to-education.org/sites/right-to-education.org/files/resource-attachments/RTE_Country_Factsheet_Tanzania_January_2015.pdf

5.1.2 The Proposed draft Constitution of Tanzania (September, 2014)

The national assembly adopted a draft Constitution in 2014 which aims to alleviate the right to education from a directives principle to a justifiable human rights, significantly improving legal protection for all citizen including those with disabilities, this proposed change if adopted, would make the right to education enforceable in court, a crucial step towards ensuring access to education for individuals with disabilities.²⁴⁹

The draft Constitution has enshrined the right to education as a human right making it directly enforceable.²⁵⁰ This would provide a legal basis to challenge any barriers to their education.²⁵¹ However the proposed Constitution has included special groups rights such as children, women and persons with disabilities in which requires the right to have infrastructure and environmental which allow him/her to go wherever he pleases, use of transport facilities and get information, use of sign language or written language with the aid of special equipment or other methods that are appropriate.²⁵² Therefore, the constitution intends to align with UNCRPD in ensuring that children with disabilities are not excluded from the general education system.

²⁴⁹ Right to Education Project, right to education country factsheet united republic of Tanzania, 2015.

²⁵⁰ Article 49-(1) of the Proposed Draft Constitution of Tanzania(September, 2014)

²⁵¹ Ibid.

²⁵² Article (50) and (54) see also article 52-(b), (c) and (d), Ibid.

5.1.3 The Education Act of 1978, (Cap 353, R.E2015)

Tanzania's main education law, the Education Act of 1978, was modified in 1995 and 2005. It defines education "means the instruction or training of persons of all ages in various fields of learning designed to contribute in spiritual, moral, mental and physical development of the community and to the attainment of the wider national goals."²⁵³

Thus, compulsory primary education is guaranteed for every child who has reached the age of seven years.²⁵⁴ It guarantees that children with physical impairments have the right to an education free from discrimination on the basis of their handicapped,²⁵⁵ it reads ‘ ‘ No child shall be refused enrolment in school and parents shall ensure that the child regularly attends the primary school.²⁵⁶ The Minister is mandated to make rules to ensure compulsory primary education and may prescribe acts or things which shall be done by any person and penalties for the contravention of those rules.

The Act includes a non-discrimination clause. It states: “No person may ... be denied opportunity to ...”²⁵⁷ This involves making that they are not excluded from educational institutions or held to lower standards than their counterparts without disabilities. In order to guarantee that these kids may attend and take part in educational programs, schools must provide appropriate accommodations. Every kid over the age of seven is guaranteed compulsory primary education under the Act, and no child including those

²⁵³ Section 2 of the Education Act of 1978, (Cap 353, R.E 2015).

²⁵⁴ Section 35A, Ibid.

²⁵⁵ Section 56, Ibid.

²⁵⁶ Section 35 Ibid, available at <https://tanzanialaws.com/e/101-education-act>, which provides that, every child of not less than five years of age shall be eligible for enrolment for preprimary education for a period of two years. accessed on 28.07.2025

²⁵⁷ Section 56, Ibid.

with physical disabilities will be denied admission. In order to provide accessibility, schools must offer the required support services, including specific equipment, personnel access, and physical environment adjustments. It may be necessary for schools to create Individualized Education Plans, or IEPs.

Consequently, Education Fund Act (2001) was established with the purpose of which is to fund the improvement of the quality, access to and equality of education at all educational levels in Tanzania and Zanzibar. This Act also establishes the Tanzania Educational Authority, which has the functions, amongst others, to: secure adequate and stable financing of education; advise the Government on new sources of revenue; raise the quality of education and increase access and equality; and promote education and training according to needs within the framework of overall national socio-economic development plans and policies.

5.1.3.1 Primary School (Compulsory Enrolment and Attendance) Rules, (G.N. No 280 of 2002) Tanzania

This regulation is outlined in the education Act and related regulations focusing on compulsory enrollment at age of 7. Attendance and conducive learning environment. Therefore the key aspects of this focus on the compulsory age for enrollment, responsibilities of parents in making sure they make registration of their children for school and ensuring their regular attendance. However, it specifies the age to be 7 years of age.²⁵⁸ Attendance, it creates offence for failure to attend schools regularly which is

²⁵⁸ Regulation 4 of the Education (Admission to Government Schools) Regulations, 2002.

initiated against parents/ guardians. However this does not speak on children with disabilities specifically physical disabilities on how they can access education rights. Therefore Tanzania government has failed in protection of the right to education by providing more theoretical than practical hence it lacks fund to run education activities such as books and necessities for education.

5.1.4 The Education and Training Policy, 1995.

The Policy address educational challenges in Tanzania, with the purpose of Improving the equity of education and strength the link between education provided at all levels and social economic and development in Tanzania.²⁵⁹ Although the mentioned policy yet, had weaknesses, especially for individuals with physical disabilities.²⁶⁰ It did not provide a comprehensive framework for inclusive education, which is essential for accommodating students with disabilities in mainstream schools. The policy endorsed pre-primary and primary education, adult literacy, and teacher training, but did not adequately address special needs education. Therefore, the policy's implementation is often weak, with limited monitoring and accountability mechanisms.

5.1.5 National Policy on Disability (2004).

Tanzania mainland has been providing services to people with disabilities without a comprehensive policy since its Independence (1961). Therefore, adoption of the National Policy on Disability (NPD) was the outcome of the government initiatives that

²⁵⁹The Education and Training Policy of 1995, Ministry of Education and Culture, Dar es Salaam, Tanzania.

²⁶⁰ Ibid.

address disability issues. Immediately at two years after, 2002 Population and Housing census carried a question on disability problem of disability from various angles including the national health initiatives to eradicate childhood diseases that cause disablement such as polio, enactment of disability legislations, inclusion of a question on disability in the 2002 National Population and Housing Census and the ratification of the United Nations standard Rules on the Equalization of Opportunities for Persons with Disabilities.

Disability: The loss or limitation of opportunities to take part in the normal life of the community on an equal level with others due to physical, mental or social factors. (b) Person with Disability: An individual whose prospects of obtaining and retaining an employment are greatly reduced due to known physical, mental or social factors.²⁶¹ Which identified Physically Impaired 28 967,932²⁶²

However, the government effort ensures persons with disability with inclusive education and reasonable supporting facilities to fully realize this right. Tanzania has developed policies to promote inclusive education such as The National Policy on Disability which outlines the government's commitment in promoting the rights and welfare of persons with disabilities in Tanzania. While it primarily focuses on broader disability issues, it includes provisions related to education and ensuring equal opportunities for persons with disabilities.

²⁶¹ 2002 Tanzania Population and Housing Census.

²⁶² Ibid.

5.1.6 The Education and Training Policy (ETP) of 2014.

This policy has been reviewed to endorse the deficiency of the Education and Training Policy (ETP) of 1995 by outlining the government's vision for the education sector. It emphasizes lifelong learning, inclusivity, and the need for education to be responsive to societal needs. Further the policy provides a framework for the development of the education sector, aligning it with broader national development goals. It underscores the importance of continuous improvement and adaptability in the education system.

Therefore, The ETP (2014) implemented a "fees-free education policy" for primary and secondary education, requiring a compulsory basic education of 11 years. This policy includes one year of pre-primary education, six years of primary, and four years of lower secondary education. The government aims to create an inclusive education system, preventing no enrolment, late enrolment, drop-out, and exclusion of vulnerable groups. However, people with physical disabilities face limited opportunities in school environments due to fewer priorities given to support them, particularly in developing countries. Moreover, Tanzania government's has a comprehensive inclusive education strategy for higher learning institutions under the Universities Act, which requires the Tanzania Commission for Universities (TCU) to make it a mandatory the inclusive education agenda by making University policies recognize people with disabilities Criteria for admission to universities. Thus in response only two universities has established the disabilities and special needs policies The University of Dar as Salaam Policy on Disability and Special Educational Needs of 2022 and Moshi Student with disabilities Policy MoCU (2017). However, according to the number of approved

University Institutions operating in Tanzania to be 49, whereas 19 are public-owned and 30 are private-owned university institutions. Thus, most of the learning Institution/schools fail to abide with law as the government initiative to protect disabilities right to inclusive education and effective realization hence continued to be hindered. Others includes: The National Strategy for Inclusive Education for (2009-2017/2018-2021) and that of 2021/2022-2025/2026), these are government strategy at ensuring an inclusive education and student-friendly learning environment that meets the educational needs of underprivileged populations, such as kids with disabilities, though Tanzania lacks a regulating legislation on inclusive education.

5.1.7 The Law of the Child Act (Cap. 13, R.E 2019)

Tanzania has taken a number of steps to respect and protect children's rights. In 2009 the Government enacted the Law of the Child Act, which implements Tanzania's obligations under the CRC by establishing the rights granted to children, streamlining and reforming the legal system to more effectively protect these rights, and providing guidelines for child welfare, custody, and also provide guidelines for addressing issues of juvenile justice and children in conflict with the law.

The Law brings together child specific provisions from a range of national laws into one document in which Article 9 guarantees the child's right to education is stipulated in these line with obligations to parents, legal guardians and those having custody of children have the duty to provide the child with the right to education and guidance

prohibiting access to education denied to children by any person.²⁶³ However, prohibits discrimination in education against children with disabilities is prohibited under the Act.²⁶⁴ Articles 87 – 93 guarantee children's right to acquire vocational skills and training, and apprenticeships, if over the age of fourteen, or having completed primary education.

5.1.8 The Persons with Disabilities Act (2010).

This legislation was enacted following the ratification of the Convention on the Rights of Persons with Disabilities (CRPD) and its protocol in 2008 as well as the enactment of The Persons with Disabilities (Rights and Privileges) Act No. 9, 2006. The article defines disabilities as the denial of an individual's ability to participate in the regular life of the community on an equal footing with others due to a physical, mental, or social factor²⁶⁵. This Act gives legal effect to the 2004 Policy and the CRPD, specifically addressing the rights of persons with disabilities in Tanzania. Among the protected rights under the Act is the right to education, detailed in which mandates equality and inclusive enjoyment of this right.²⁶⁶ The Act prohibits learning institutions from denying admission to students with disabilities due to their disability and obligates these institutions to ensure non-discrimination and consider the special needs of students with disabilities of their special needs.²⁶⁷

²⁶³ Section 8 and 9 of the Law of the Child Act of 2009.

²⁶⁴ Section 5, Ibid.

²⁶⁵ Section (3) of the Law of the Child Act of 2009.

²⁶⁶ Section 27, Ibid.

²⁶⁷ Section 28, of the Person with Disabilities Act No.09 of 2010.

However, the Act does not specifically elaborate on how individuals can enforce their education rights once they are violated, particularly for those with physical disabilities. While the Act mandates the Minister to ensure that learning institutions act in accordance with it, there are no proper sanctions for institutions that fail to comply.²⁶⁸

Consequently, many learning institutions have unsuitable infrastructures, making it difficult for persons with disabilities to access quality education. To address these issues, the Act requires the government to ensure that persons with disabilities have equal access to educational institutions at all levels and mandates the adaptation of educational facilities and materials to meet the needs of students with disabilities.²⁶⁹ It also obliges educational institutions to provide appropriate support services to facilitate the education of students with disabilities of students with disabilities. Despite these provisions, there are currently only 16 special schools and 159 special units integrated into regular schools among all schools in Tanzania, highlighting the gap between the law and its implementation.

5.1.9 The Reports of Child abuse in Tanzania Primary Schools

This is concerning with high rate of physical and psychological violence reported by students. Corporal punishment is legal in Tanzania schools and many children report experiencing physical violence at the hands of their teachers.²⁷⁰

²⁶⁸ Section 47, Ibid.

²⁶⁹ Section 29, Ibid. of the Law of the Child Act of 2009.

²⁷⁰ Wizara ya Elimu, available at, <https://www.moe.go.tz>

According to survey findings provides that, child abuse and neglect and out of school of school children are infrequent problems in their community.²⁷¹

5.1.8 The Education Sector Development Plans.

Since 1997, Tanzania's government has developed Education Sector Development Plans (ESDP) to ensure equal access to education and training for all, including the most disadvantaged. The ESDP aims to provide twelve years of free and compulsory Basic Education and expand Technical and Vocational Education and Training to provide Tanzania with the skilled human resources needed to become a semi-industrialized middle-income country by 2025. However, it aligns with the National Five-Year Development Plan of 2016/17-2020/21, by its motto” leaving no one behind “by 2025.

5.2 Relevance of the Study.

This study intends to explore Tanzania framework on the right to education for individuals with physical disabilities in mainland Tanzania in comparative analysis with Kenya.

By comparing Tanzania's legal framework with Kenya's on the right to education rights for individuals with physical disabilities, basically focus on their alignment with International standards with the gals for improving and harmonization of domestic law. since both are members Universal Declaration on Human Rights (UDHR), the Salamanca Statement of Action on Special education Needs as well as the Convention on the Rights of Persons with Disabilities (CRPD). Also, both jurisdiction education

²⁷¹ Global Partnership to end violence against children, 2021.

policies provide free and compulsory basic education that is guided by the principle of universal access to education for every child under 18 years.²⁷²

Therefore, the CRPD was internationally adopted in 2006 by United Nation in which Kenya signed 2008 and ratified in 2011 while Tanzania signed in 2007, ratified the same in 2008 and its optional Protocol on 2009 respectively.²⁷³ Intentionally, the CRPD interprets and implies traditional human rights in a manner that specifically addresses the particular issues faced by persons with disabilities. However, the same convention shifts perspective from viewing disabled individuals as objects of charity and medical treatment to social protection and actively participate in society, ensuring accessibility to the physical environment, transportation, information, and public services. Further, regionally are both members of the African Union as well as the African Charter on Human and Peoples Rights (ACHPR). However, Both Countries, Kenya and Tanzania in particular, are former British colony countries which follow a dualist approach to International human rights provisions, require domestic legislative processes.²⁷⁴ This is termed as a long-standing jurisprudence for the dualist government to accept being bound by laws other than their own after ratifying and domesticating them.²⁷⁵

²⁷² The Universal Declaration on Human Rights (UDHR), 1948.

²⁷³ <https://www.rodra.co.za/country-reports/16-country-reports/81-updated-country-report-tanzania>

²⁷⁴ Article 63-(3) (e) of the Constitution on the United Republic of Tanzania (cap 2, R.E 2008), Read also article 2(6) of the Kenya Constitution 2010 and the Treaty making and Ratification Act, No. 45 of 2012.

²⁷⁵ *Okunda and Another v. Republic*, International Law Reports. 1978; 51:414-423. doi:10.1017/CBO9781316151785.044, the Court of Appeal Endorsed this approach, saying that “the provisions of a treaty entered into by the Government of Kenya do not become part of the municipal law of Kenya save in so far as they are made such by the law of Kenya....”

Therefore, through reviewing both Countries legislative framework and their commitment. The best practice of an individual state is the one that embraces the articles of International legal instruments on the right to education for individuals with physical disabilities. In order to come to the conclusion of which state does better than the other state between the two, the researcher is going to examine the strengths and weaknesses of an individual legislative legal frame work. Notably, Tanzanian current Constitution only recognizes the right to education as a fundamental Objective and Directive Principle of State Policy rather than as a human right, which means that it is not enforceable by any court. However, Tanzania is currently reviewing its Constitution and the proposed draft Constitution enshrines the right to education as a human right. If adopted, the new Constitution will substantially improve the legal protection of the right to education of Tanzanian citizens.²⁷⁶

5.3 Lesson Tanzania can learn from Kenya.

Tanzania has to draw several valuable lessons from Kenya's experiences in promoting the right to education for individuals with physical disabilities. Here are some key lessons to consider: Firstly, Tanzania has to establish a Comprehensive Legal and Policy Framework that explicitly guarantees the right to education for individuals with physical disabilities. For instance, the Tanzania Constitution does not direct mention individuals with disabilities right to education it has simply generalized that right under article 11-(2) (3) which is among of fundamental objectives and directives principal of the state's

²⁷⁶https://www.right-to-education.org/sites/right-to-education.org/files/resource-attachments/RTE_Country_Facsheet_Tanzania_January_2015.pdf, accessed on 28.07.2025

policy. However, Kenya's Constitution, Persons with Disabilities Act, and Basic Education Act provide a solid foundation for ensuring inclusive education. Thus, article (53) 43(1) (f), 54(1) (b) respectively. Kenya's Constitution of 2010 also has enshrined the right to education specific for individuals with disabilities including those with physical impairment.

Secondly, Emphasize Inclusive Education Policies: Tanzania should prioritize the development and implementation of inclusive education policies that cater to the diverse needs of learners with disabilities, hence the country has established an education inclusive strategies with different phases from 2009 with the current National Strategy for inclusive education (2021/2022-2025/2026). Generally it lacks inclusive education policy. Kenya's Special Needs Education Policy and National Education Sector Strategic Plan focus on early identification, teacher training, and creating supportive learning environments. Tanzania can adopt similar policies that promote inclusive practices and ensure equal access to quality education for all learners. Thirdly, Tanzania must strengthen government cooperation and commitment to inclusive education by working with foreign partners, non-governmental organizations, and government agencies. When there are major obstacles to putting inclusive education policies into practice, Tanzania can investigate creative funding sources and look for international cooperation to mobilize resources efficiently.

5.4 Conclusion.

The study has revealed that, despite Tanzania being a signatory to inter nation's conventions but yet, the Constitution of the United Republic of Tanzania does neither include the right to education as among of the fundamental of human rights nor includes under the provisions of the Basic Rights and Duties Enforcement Act. Therefore, this right is not enforceable under article 30-(3) of the Constitution. Also the Commission of good governance and human rights cannot receive complains against discrimination or infringement on the right to education, not only for those with physical disabilities but also even those without disabilities. Consequently, the Persons with Disabilities Act of 2010 since its enactments has not been implemented by any Policy rather than having inclusive education strategy with different phase for a short term. Therefore Kenya legal framework is ahead of Tanzania on the protection of the rights of persons with physical disabilities; hence its constitution has included the provisions of the rights.

CHAPTER SIX

LEGAL GAPES FACING THE IMPLEMENTING OF THE RIGHT TO

EDUCATION FOR INDIVIDUALS WITH PHYSICAL DISABILITIES IN

MAINLAND TANZANIA

6.0 Introduction

From the discussion in previously chapters that is four and five, it has expressly shown that Kenya has the best practice on the legal safeguard to the right to education for individuals with physical disabilities compared to mainland Tanzania on the ground that, Kenya has enshrined the most of the provisions protecting rights to education for disabilities into its constitution and its legal system as well.

Consequently, despite both Countries, Kenya and Tanzania being a signatory to the UN Convention on the rights of Persons with Disabilities, Countries that affiliate to this convention are bound by its international law to ensure that children's rights to all forms of life are upheld. It is from this convention that stems the inclusive approach to education, still children with disabilities and special needs are often excluded from mainstream classes in which Tanzania has no exceptional to this. Generally, Kenya scores the highest in the rating of its educational institutions and educational policies. This chapter examines the legal gaps affecting the implementation of the right to education for students with physical disabilities in Tanzania Mainland, comparing it with Kenya's by identifying the available gaps: highlighting the urgent need for legal reforms to ensure that this right is fully realized for all students, regardless of physical ability.

6.1 Lack of Harmonization with International Standards.

Tanzania has signed the United Nations Convention of the Rights of Persons with Disabilities since 2006 and its protocol on 2008 and pledged to achieve Sustainable Development Goal 4 (SDG4), ensuring equal access to education and vocational training for all, including persons with disabilities, by 2030. However, many students still face significant barriers.²⁷⁷ The problem arises that, its national laws and policies do not fully align with the convention's standards. This has resulted gaps in the protection and promotion of the right to education for individuals with physical disabilities.

The Education and Training Policy of 1995 in Tanzania failed to address educational challenges, particularly for individuals with physical disabilities. It had weaknesses like a lack of an inclusive education framework, inadequate infrastructure, limited teacher training, scarcity of specialized learning materials, and insufficient support services. The policy also failed to address the need for awareness and sensitization programs to reduce stigma and discrimination. There was a significant gap between the law and practical implementation, leading to inconsistent application.

Also, it is provides under the law of the child that it is a parent or guardian duty to provide education to the provide education for a child who is in custody of a child.²⁷⁸ This provision directly implies the government to escape the protection of the

²⁷⁷ World Bank Report, available at, <https://blogs.worldbank.org/en/education/disability-and-right-education-all>

²⁷⁸ Section 8(1) and (6(a) of the Law of the Child Act, 2009 (R.E 2019).

right to education to a child as was stated under the convention on the rights and welfare of the child.

The Tanzanian national policy on disabilities emphasizes the importance of education for a child's potential, but the educational system in the country lacks equal access for disabled children. Most school facilities are inaccessible, and teacher education and curriculum do not incorporate the needs of disabled persons, leading to poor enrollment in primary schools.

Tanzania, a member state of the United Nations, is under the oversight of various UN human rights bodies and treaty authorities. It is required to adhere to international standards in implementing inclusive education, focusing on basic learning needs. Despite ratifying the Convention on the Rights of Persons with Disabilities, Tanzania has not ratified the Optional Protocol to the International Covenant on Economic, Social, and Cultural Rights and the Optional Protocol to the Convention on the Rights of the Child. This means the right to education in Tanzania is not enforceable at national, regional, or international levels.

Inconsistency or ambiguities in how "disability" is defined in Tanzania national laws compared to international standards, leading to varying interpretations and applications of the law. For instance: under the Persons with Disabilities Act, Disability" in relation to an individual means loss or limitation of opportunities to take part in the normal life of the community on an equal level with others due to physical, mental or social factors. which the convention on the rights of persons with disabilities (CRPD) 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 an equal basis with others. These impairments can result from birth complications or develop over time due to diseases or accidents.

6.2 The Right to Education as among of the fundamental Objectives and Directive Principles of the State Policy.

While Tanzania has committed itself to strong legal frameworks in place to support the education of individuals with disabilities, though these laws are not always comprehensive or effectively enforced. The right to education in Tanzania is protected under the fundamental objectives and directives of state policy, which cannot be enforced by the court of law. The Constitution of the United Republic of Tanzania, adopted in 1977, includes the Bills of Rights from article 12 to 29 under the Basic Rights and Duties Act.²⁷⁹

Consequently, the right to education is termed as a fundamental objective and directive principle of State policy rather than being among of human rights provisions,²⁸⁰ which means that it is not enforceable by any court.²⁸¹ The article reads that “, every person has the right to access education and every citizen shall be free to pursue education in a field of his choice up to his merit and ability.”²⁸² obviously, the word “every person / every citizen” does not explicitly mention individuals with disabilities right to education as

²⁷⁹Section 4 of the Basic Rights Duties and Enforcement Act(Cap 3, R.E 2019)

²⁸⁰ Article (11) of the Constitution of the United Republic of Tanzania, (Cap 2, R.E 2008).

²⁸¹ Article 7(2), Ibid.

²⁸²Article 11-(2), Ibid

was mandated by the international covenant on social , political and cultural rights requires every states member had to provides the provisions on the right to education for individuals with disabilities into their domestic constitution. This means that the provisions of Article 11 are not enforceable by any court as it has been explicitly stated.²⁸³ However, Tanzania is currently reviewing its Constitution and the proposed draft Constitution enshrines the right to education as a human right. If adopted, the new Constitution will substantially improve the legal protection of the right to education of Tanzanian citizens.

6.3 Discrimination/Rule of Law

Tanzanian Constitution and national laws prohibit disability discrimination, but they are not comprehensive enough to address all forms of discrimination faced by students with physical disabilities in the education system. Since the articles of the constitution states that all human beings are born free and equal which extend to mean that all people are equal before the law and are entitled without any discrimination to protection and equality before the law.²⁸⁴ Also, further the articles declares that Tanzania is the sates which adheres and reaffirms the principles by which all law and policies should conform, including the rule of law, human rights, equality, and the eradication of injustice, discrimination.²⁸⁵ Therefore its Constitution must adhere the principle of

²⁸³ Article 11(2) 130 of the Constitution of the United Republic of Tanzania (Cap, 2 R.E 2008).

²⁸⁴ Article 12(1)(2) of the of the Constitution of the United Republic of Tanzania (Cap. 2, R.E 2019)

²⁸⁴ Ibid.

²⁸⁵ Article 9, Ibid.

equality and non-discrimination.²⁸⁶ Hence by providing the right to education under state directives and policy impliedly creates discrimination to a group of persons who have disabilities which is against the rule of law. However, The Supreme Court of the United States recently held, in *Endrew F. v. Douglas County School District*, that every child's educational program must be 'appropriately ambitious in light of his circumstances' and that children with disabilities should have the chance to 'meet challenging objectives'.

6.4 No Remedy Available.

The right to education is a fundamental objective and directive principle of State policy, not a basic right under Part III of the Constitution, making provisions of Article 11 unenforceable by courts and preventing individuals from claiming constitution petitions on Article 30-(3).²⁸⁷ Therefore from the above fact the Institutions which receive complaints in relation to violation of human rights and conduct inquiry on matters relating to the infringement of human rights and violation of principles of good governance cannot work towards complains on the infringement on the right to education for those with physical disabilities hence it has no constitutional power over any complains.²⁸⁸ Besides that, the constitution has infringed the realization of the right to education not only for individuals with physical disabilities but also even those without disability are not entitled to specific legal remedies if their right to education is

²⁸⁶ Article 13, Ibid.

²⁸⁷ The Constitution of the United Republic of Tanzania of 1977 (Cap 2, R.E 2008), Read also Section (4) of the Basic Rights and Duties Enforcement Act (Cap. 3 R.E. 2019) which states that, Where any person believes that his right to education has been or is about to be infringed by alleges that any of the provisions of Articles 12 to 29 of the Constitution has been, is being or is likely to be contravened in relation to him, he may, without prejudice to any other action with respect to the same matter that is lawfully available, apply to the High Court for redress

²⁸⁸ Article 130) of the of the Constitution of the united republic of Tanzania (Cap.2 R.E 2008

infringed nor to file constitutional petitions.²⁸⁹ Therefore, the only remedy available under the persons with disabilities act is from the Complaints related to administrative grievances can be directed to the Ministry of Education, Science, and Technology, which oversees educational policies and handles concerns about the quality and accessibility of education for people with disabilities.²⁹⁰

Since then, Despite of Tanzania is ratifying the most important regional and international treaties protecting the right to education as a human right ,The Constitution has expressly shown discrimination which goes contrary to Article 24 of the CRPD on the ground that no individual can get remedy under African court on human and peoples right since Tanzania has yet to ratified the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights and the Optional Protocol to the Convention on the Rights of the Child on a communication procedure, both of which allow individuals to make formal complaints to the relevant UN treaty body.

Moreover, the African Charter on Human and Peoples' Rights and has ratified the African Court's Protocol of 1998, making a declaration under Article 34-(6) which acknowledges the complaints mechanisms under the African Charter. However, Tanzania withdrew from Article 34-(6) of the African Court Protocol on November 14, 2019 goes contrary to international provisions that state every individual shall have the right to an effective remedy by competent national tribunals for acts violating fundamental rights granted by the constitution or by law.

²⁸⁹ Article 30-(3), Ibid.

²⁹⁰ Section 28-(1) of the Persons with Disabilities Act, 2010.

6.5 Inconsistency between National Philosophy and Education and Training Policies

The National Language of the United Republic is Kiswahili and shall be used in official national and governmental communications.²⁹¹ The Education and Training Policy of 1995, while offering opportunities for increased access, equity, and tailored education, fails to assign responsibilities to specific education stakeholders and focus on adult and non-formal education. The 2014 policy, while addressing the deficiencies of the 1995 policy, lacks specific policy objectives and a legal framework for implementation. Despite promises to amend relevant Education Acts, the 2014 policy has not been followed by any significant changes to address its inadequacy.²⁹²

6.6 Lack of Inclusive Education Policy.

The government initiatives towards the protection of the right to education for individuals with disabilities has launched the National Strategy for Inclusive Education with different phases such as; (2009-2017/2018-2021) and that of 2021/2022-2025/2026), these are government strategy at ensuring an inclusive education and student-friendly learning environment that meets the educational needs of underprivileged populations, such as kids with disabilities, though Tanzania lacks a regulating legislation on inclusive education.

²⁹¹ Article 4-(1) of the Constitution of the United Republic of Tanzania (Cap.2 R.E 2008).

²⁹² Haki Elimu, (2021), The Education We Want: A Critical Analysis of the Education and Training Policy (ETP), 2014, Issues, and Recommendations, last up to date 2022.

However, a comprehensive inclusive education strategy for higher learning institutions under the Universities Act, which requires the Tanzania Commission for Universities (TCU) to make it a mandatory the inclusive education agenda by making University policies recognize people with disabilities Criteria for admission to universities. Thus in response only two universities has established the disabilities and special needs policies The University of Dar as Salaam Policy on Disability and Special Educational Needs and Moshi Student with disabilities Policy MoCU .²⁹³ However, according to the number of approved University Institutions operating in Tanzania to be 49, whereas 19 are public-owned and 30 are private-owned university institutions. Thus, most of the learning Institution/schools fail to abide with law as the government initiative to protect disabilities right to inclusive education and effective realization hence continued to be hindered.²⁹⁴

Besides, that, the persons with disabilities Act mandated learning institutions/schools from denying admission of any student on the basis of disability, however, Learning institutions in Tanzania lack clear policies and guidelines for admitting students with disabilities and providing accessible environments which is among of the challenges affecting effective realization of the right to education in for among physical disabled students to access education particularly in primary and secondary school and higher learning institutions. Thus, this lack of accessibility hinders the realization of the fundamental human right to education. Therefore, in Tanzania the general laws that

²⁹³University of Dar as Salaam Policy on Disability and Special Educational Needs (2022), Dar es Salaam Tanzania.

²⁹⁴Moshi Student with Disabilities Policy MoCU (2017)

address the right to education, they often lack specific provisions tailored to the needs of individuals with physical disabilities. For example, the Education Act may not explicitly mandate the inclusion of accessibility features in schools or the provision of specialized teaching aids.

6.7 Inadequate Infrastructure.

Despite legal provisions, students with physical disabilities still face significant barriers in accessing quality education, known as legal gaps. These challenges undermine the effectiveness of existing laws and policies. Regardless, Tanzania's initiatives to inclusive education, such as a fee-free education policy for primary and secondary schools, the implementation of this right is still far from achieving universal access to basic education in mainstream schools. The current laws were enacted without consideration of the differential needs of persons with disabilities. The administration of such legislations as relating to construction where stairs are preferred to ramps or information where persons with disabilities have no access to Braille prints or sign language interpretation. Tanzania faces significant challenges for students with physical impairments in accessing education due to inaccessible learning infrastructures, such as inaccessible environments, transportation, and lack of assistive devices.

It is a general rule under the Convention States Parties shall ensure that persons with disabilities are able to access general tertiary education, vocational training, adult education and lifelong learning without discrimination and on an equal basis with others. To this end, States Parties shall ensure that reasonable accommodation is provided to

persons with disabilities. In order to realize the right to live independently and be included in the community.²⁹⁵ States party the failure of some States parties to provide students with disabilities, including students with visible and invisible disabilities and those who experience multiple discrimination, with equal access to mainstream school with inclusive and quality education is discriminatory, contrary to the objectives of the Convention which requires States parties to ensure an inclusive education for persons with disabilities on an equal basis with others in the communities in which they live.²⁹⁶ That goal can be achieved by providing reasonable accommodation of an individual's requirement to universal design. Standardized assessment systems, including entry examinations, that directly or indirectly exclude students with disabilities are discriminatory²⁹⁷ and in contravention of articles 5 and 24.

The Convention on the Right of Persons with Disabilities acknowledges the right to education for individuals with disabilities, but many Tanzanian schools lack ramps, elevators, and accessible toilets. Accessible transportation options are also lacking, making it difficult for students with disabilities to travel to and from school. The country is committed to an inclusive education approach, implementing legislations, regulations, and policies to ensure equal opportunities for all. By ratifying international treaties, both countries agree to ensure that domestic law conforms to international human rights guarantees. Therefore, international human rights provisions require domestic legislative

²⁹⁵ Article 24(5) the Convention on the Right of Persons with Disabilities, 2006.

²⁹⁶ Article 24 -(2) (b), The Convention on the Right of Persons with Disabilities, 2006

²⁹⁷ Article 24 (2) (c), Ibid.

processes, which is the long-standing jurisprudence for dualist countries to accept being bound by laws other than theirs after ratifying and domesticating them.

6.8 Conclusion.

The chapter has explored the gaps affecting on the implementation of the right to education for individuals with physical disabilities in Tanzania mainland. Tanzania Mainland has pledged to protect the right to education for individuals with disabilities, including those with physical impairments, in line with international and regional instruments. However, legal gaps such as inadequate legislative provisions, weak enforcement mechanisms, and regional disparities hinder the full realization of this right. To achieve true educational inclusivity, Tanzania Mainland must strengthen the legal framework, improve enforcement, and increase awareness. This requires the development of comprehensive, enforceable legislation, stronger enforcement mechanisms, increased awareness, and adequate resource allocation. Despite lacking a clear policy, Tanzania actively participates in international and local organizations, including signing disability-specific United Nations instruments at the international level. Addressing these issues is crucial for ensuring equal access to quality education for all students, regardless of physical ability.

CHAPTER SEVEN

SUMMARY OF THE FINDINGS, CONCLUSION AND RECOMMENDATIONS

7.0 Introduction.

This dissertation goal was to examine the legal framework's capacity to protect the educational rights of individuals with physical disabilities in Tanzania Mainland, identifying its strengths and gaps that hinder full inclusion. The study has explored the Best practices under International standards, Also Tanzania's current frameworks has been compared with Kenya's, examining the legal challenges affecting the implementation of the right to education in Tanzania. The researcher has further, proposed evidence-based recommendations to address the legal challenges affective implementation of the mentioned right for those individuals.

This chapter provides the Summary of the legal safeguard on the right to education for individuals with physical disabilities in main land Tanzania. It has explored the origin and the movement of people with disabilities from being termed as object or disadvantages people to education right owner. This dissertation's core methodology was a qualitative study using a strict doctrinal approach. It employed legal doctrines, rules, and Concepts to analyze statutory provisions with an emphasis on comprehending legal principles. Inductive reasoning were used to arrive at the research's conclusions, Recommendations and findings. Additionally, a comparative data analysis was conducted using international instruments, Tanzania, and Kenya, as the primary standards of the doctrine, in order to discover commonalities and variations between analytical and historical methods. There is use of both historical and analytical methods.

Notably, The Universal Declaration of Human Rights (UDHR) and international instruments like the International Covenant on Economic, Social, and Cultural Right, United Nations Convention on the Rights of the Child, African Charter on Human and Peoples Right, African Charter on the Rights and Welfare of the Child, and UN Convention on Rights of People with Disabilities all apply to Kenya due to Salamanca and Tanzania's key participation.²⁹⁸

7.2 Research Findings

It is each member states obligation to express their consent through ratification, formal confirmation, acceptance, or approval of International Treaties or Agreements. This mark as litmus test for assessing the government's commitment to fundamental rights, including the right to education for persons with disabilities.²⁹⁹ Therefore, By the United Republic of Tanzania ratifying of the United Nations Conventions of the Rights of Persons with Disabilities(UNCRPD) underscores its commitment to article 24 of the Conventions as well as the Sustainable Development Goal 4(SDG4) to ensure equal access to all levels of education and vocation training for the venerable including persons with disabilities” by 2030. Therefore, this research aimed to compare International Instruments protecting the right to education for individuals with physical disabilities in Tanzania, explore Tanzania's mainland legal framework on the same subject, and propose evidence-based recommendations for equal access to education for

²⁹⁸Article 26,UDHR,article 13 of the International Covenant on Economic, Social and Cultural Right, Article 28 of the United Nation Convention on the Rights of the Child, article 18 of the African Charter on Human and Peoples Right, Article 11 of the African Charter on the Rights and Welfare of the Child and Article 24 and Convention on Rights of People with Disabilities Article 24

²⁹⁹The Vienna Conventions on the Law of Treaties.

individuals with physical disabilities in Tanzania. This study identifies principals and standards set by international conventions and treaties, including Tanzania that member states must abide by Globally, it was approximately that, 3.2 million children aged 7-17 were out of school, with 1.2 million never having attended, indicting persistent barriers to access particularly for vulnerable groups.³⁰⁰ Despite of students with disabilities having a low rate of initial enrolment, even if they do attend schools. Children with disabilities are more likely to drop out and leave school early without transitioning to secondary schools and beyond. This is due to having increase risk of school violence preventing the safe enjoyment of their right to education³⁰¹

Therefore Tanzania government initiatives by enacting legislations and policies in promoting inclusive education for all through introducing free education policy in 2016 which lead to increased enrollment. Still exist secondary education challenge, since the net secondary enrollment rate was only 27% demonstrating a major gap between primary and secondary education and the transition to higher level remained challenging.³⁰² Apart from higher enrollment rates in Tanzania, by 2020 this means the primary school gross enrollment ratio was 96.91% indicating strong commitment to universal primary education.³⁰³ Only 58% of the students completed primary school and just 34% completed secondary education, highlighting a significant drop-off in the

³⁰⁰ World Bank, <http://documents1.worldbank.org>.

³⁰¹ UNESCO, School Violence and Bullying Global Status Report, 2016.

³⁰² Kothari ,(2020).

³⁰³ World Bank Report of 2020.

system due to challenges related to resource allocation and infrastructure.³⁰⁴ Thus Tanzania Commission for Secondary Education(TCSE) along sides with other national policies in protecting the rights of persons with disabilities in secondary education still barriers are addressed such as overcrowded class rooms, inadequate resources and lack of teacher training in inclusive practices.³⁰⁵ The research reveals that, despite of Tanzania's legislation, policies, and plans on the right to education for individuals with disabilities still its legal framework do not align with international standards.³⁰⁶ On the grounds that:-

First, The current Tanzanian Constitution does not recognizes the right to education as a fundamental human right, rather than being under fundamental principles and directives of the state Policy means it is not enforceable before court of law.³⁰⁷ Therefore Tanzania does not aligned with article 24 of the UNCRPD of 2006 in protecting individuals with disabilities right to education hence it is not explicitly mentioned among of basic human rights provisions which are from article 12 to 29. This means no person has power to file a petition before court seeking remedy for infringement on the education rights on the basis of article 30-(3) read together with section 6 of the Basic rights and duties enforcement Act.³⁰⁸

³⁰⁴ World Bank Report of 2020.

³⁰⁵ Human Right Watch, 2020.

³⁰⁶ Article 26 of The Universal Declaration of Human Rights (UDHR) 1948, see also Article 13 of the International Covenant on Economic, Social and Cultural Right Article 28 of the, United Nation Convention on the Rights of the Child, Article 18 of the African Charter on Human and Peoples Right, Article 11 of the African Charter on the Rights and Welfare of the Child, and article 24 of the Convention on Rights of People with Disabilities (CRPD) 2006.

³⁰⁷ Article 11-(2) of the Constitution of the United Republic of Tanzania of 1977(Cap 2, R.E 2008).

³⁰⁸ The Constitution of the United Republic of Tanzania of 1977 9 (Cap 2, R.E 2008) See, also Section 6 of BREDA (Cap 3 of 1994 (R.E 2019).

Second, the ETP 1995 lacks accountability and specific responsibilities for education stakeholders, focusing less on adult and non-formal education. Despite offering opportunities for increased access, equity, and tailored education, it lacks a legal framework for implementation and fails to assign responsibilities.³⁰⁹ Also, The ETP 2014 did not establish specific policy objectives for different education levels, and it was not followed by amendments to relevant Education Acts. Policymakers did not separate policy documents into relevant subsectors. The study found that persons with disabilities cannot access education without accessible transport, school buildings, and information and communication. Inclusive education should be accessible for all aspects, including buildings, assistive systems, support services, and reasonable school accommodation.³¹⁰

Third, The Persons with Disabilities Act 2010 aims to protect the rights of people with disabilities and remove barriers to education. However, it lacks effective enforcement mechanisms, as the ministry of education only initiated an inclusive education strategy without implementing supportive policies under delegation power.³¹¹ The Act fails to comply with the Convention on the Rights of Persons with Disabilities (CRPD) by failing to ensure the provision of reasonable accommodations.³¹² Article 24 of the CRPD mandates states parties to ensure children with disabilities receive the necessary accommodations to access education on inclusive basis, it has only created offences for any persons or institutions discriminate a person with disabilities for whatever reason,

³⁰⁹ Haki Elimu, (2021), *The Education We Want: A Critical Analysis of the Education and Training Policy (ETP)*, 2014, Issues, and Recommendations, last up to date 2022.

³¹⁰ CRPD General Comment 2: Article 9.

³¹¹ Section 61, (d) and (f) of The persons with disabilities Act, No 09 of 2010

³¹² Article 24 of the Convention on the Rights of Person with Disabilities, 2006 (CRPD)

build or construct any public premises without accessibility of person with disabilities.³¹³

Despite these findings in Tanzania legal system, data analysis reveals similarities between the two jurisdictions in protecting the right to education for individuals with physical disabilities, namely:

7.1.1 Differences.

This study highlights opportunities for improvement and policy change, defending Constitutionalism, good governance, and human rights. It also offers insightful information on the legislative safeguards and their influence on the educational experiences of people with physical impairments in Tanzania Mainland.

The study discovered that although while it is widely acknowledged as a fundamental human right, access to education is necessary for the practice of other rights. Article 12-29 of the Tanzanian Constitution does not include the same right among the fundamental duties and rights. Instead, it states that "everyone has the right to access education and every citizen shall be free to pursue education in a field of his choice," without making any special mention of those with disabilities. Additionally, sub-article 3 declares that "every citizen shall be free to pursue education and techniques and that every person has the right to access education." As a result, this privilege is granted within the state

³¹³ Section 62-(b) and (h) of the persons with disabilities Act, No 09 of 2010.

policy's objectives, direction, and guiding principles, which cannot be enforceable in court once someone's right to education is infringed.³¹⁴

Therefore Tanzania by signing and ratifying international Instruments protecting individuals with disabilities right to education including the UNCRPDs ,in which domestically implemented with the Persons with Disabilities Act of 2006 which emphasize government duties to provide technical aids, assistive technologies, accessible information, and legal protection. States members including Tanzania must ensure safe, affordable, and technologically equipped schools that support all learners. These legal obligations must align with international human rights standards, allowing aggrieved individuals to seek remedies and hold governments accountable.

However, in Kenya the right to education for disabilities is termed as a fundamental basic right under the constitution which is a free and compulsory education for all children including those which disabilities. It marked its alignment with the International Convention on Economic Social and Cultural Rights, (ICESCR) as well as the Convention on the Rights of Persons with Disabilities as well as the states policies.³¹⁵

The study found that 2009 Kenya's National Special Needs Education Policy Framework, the National council for persons with disabilities, the 2013-2018 National Education Sector Plan (NESP)all these implements the effectiveness of the persons with disabilities Act of 2003 therefore aligns with the country's constitution, Kenya Vision

³¹⁴ Article 7(2) of the Constitution of the United Republic of Tanzania of 1977 9 (Cap 2, R.E 2008)

³¹⁵ Article 13 of the International Covenants on Economic social and Cultural Rights, ICESCR), 1966.see also article 54 of the Kenyan Constitution of 2010.

2030, and Goal No. 4 of the Sustainable Development Goals. Therefore Kenya's inclusive education system is integrated into national legislation and practice, in accordance with international norms on the right to education for people with physical impairments.

However, Tanzania has implemented short-term inclusive education strategies with distinct stages starting in 2009, including the current National Strategy for Inclusive Education (2021/2022-2025/2026); even though the country acknowledges inclusive Education under the Persons with Disabilities Act 2010. Consequently the Act doesn't have an implementation policy. In accordance with international norms on the right to education for people with physical impairments, as stated in article 24 of the Convention on the Rights of Persons with impairments. While both countries are moving towards inclusive education, Tanzania has a stronger focus on integrating students into mainstream schools while Kenya also focuses on creating barrier-free environments and specialized sports.

Apart from Kenya being a leader in protecting the right to education for individuals with physical disabilities, The Basic Education Act of 2013 recognizes special needs education which involves adapting curriculum, teaching methods and learning environments to cater individual needs, thus it emphasizes on special school \separate school rather than inclusive education, nor does it require that the state is under any obligation to determine whether or not a student with a disability should be educated in the regular school rather than in a separate school.

7.1.2 Similarities.

Besides Kenya being ahead of Tanzania on the protection of the right to education for individuals with physical disabilities, still these nations that got similarities that: Kenya gained independence in 1963, while Tanzania independence was in 1961. Therefore, Both Countries have a common law jurisdiction that inherited the British legal system after independence. They have a history of advocating for education for individuals with physical disabilities. Both jurisdictions have ratified key international conventions, including the Universal Declaration on Human Rights, ICESCR, the Salamanca framework, and the United Nations Convention on the Rights of Persons with Disabilities (CRPD), emphasizing the importance of inclusive education. In which Kenya ratified the convention on May 19, 2008 while Tanzania ratified it on November 10, 2009.

The Convention on the Rights of Persons with Disabilities, 2006 (CRPD) marked a turning point by explicitly mandating inclusive, accessible, and quality education systems for all, with legal obligations for reasonable accommodations, universal design, and lifelong learning opportunities Countries.³¹⁶ States ratifying these treaties undertake binding commitments to enact domestic legislation that: Ensures accessible infrastructure and resources that Provides qualified teachers and inclusive curricula, Guarantees equal participation of all learners in mainstream schools

³¹⁶https://www.right-to-education.org/sites/right-to-education.org/files/resource-attachments/A%20Human%20Rights-based%20Approach%20to%20Education%20for%20All_0.pdf

Both jurisdiction has a dualist system in its judicial history, requiring ratification for international conventions and treaties. The Persons with Disabilities Act of 2010 and the Education Act, both enacted by Kenya, promote inclusive education and prohibit discrimination based on disability; ensuring access to education for individuals with physical disabilities. The Tanzanian government has implemented policies to enhance educational access for students with disabilities, including the National Strategy for Inclusive Education. However, research indicates the need for a more comprehensive legal framework to protect the right to education for individuals with physical disabilities in Tanzania Mainland.

Both Nations has the National Council for Persons with Disability established under the Persons with Disabilities Act with the goals on promoting and ensure persons with disabilities equal opportunities including inclusive education, though that of Kenya has large impact compared to Tanzania.

7.2 Conclusion.

The study has examined the right to education for individuals with physical disabilities in Tanzania mainland; however, a number of research objectives and questions have been discussed in relation to the topic. Notably, the historical background of the right to education for disabilities was explored since pre- colonial society, during independence as well as after colonial era and the current position of the right to education for individuals with Physical disabilities. Consequently doctrinal research methodology was applied with a comparative analysis between international standards as well as other

jurisdiction such as Kenya as both being member states of the United Nations as well as African Union and East African Community. Notably, the researcher applied pure doctrinal methodology in which principals, doctrines and rules were applied in the examination of legal safeguard on the right to education for individuals with physical disabilities. During this research there was no application of empirical evidence hence the title of the research does not need going to field to collect data or asking to people opinions. However, the Legal reasoning was applied with inductive as well as deductive methods. Further, the comparative analysis method was applied between International legal frame work with Tanzania as well as other nations such as Kenya. Therefore, this methodology is a time costs as well as easily researchable.

Despite the inclusive promise of the Convention on the Rights of Persons with Disabilities (CRPD) as well as the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Persons with Disabilities in Africa, the implementation situation has not been effective, along with other forms of discrimination they encounter. This research in respective assess how well the existing legal frameworks, policies and practices in Tanzania as among of African countries have met the needs for inclusion of children and adults with disabilities. Notably, the social and economic rights of persons with disabilities are protected in the Constitutions of most countries and enshrined in the normative frameworks that most African leaders have adopted and ratified. These commitments need to be borne in mind when thinking about the present and the future. Inclusive development is an investment and must be viewed as part of a package of reforms that are connected to substantive social.

Consequently, While Tanzania Mainland has established a legal framework aimed at safeguarding the right to education for individuals with physical disabilities by rarifying and International conventions and treaties which mean committing itself to compliance with those standards, though significant gaps and challenges remain. Thus, this right is not enforceable in court hence it is enshrined under the fundamental principles and directive of the state's policy that means this right has no legal remedy despite of enacting the Persons with Disabilities Act of 2010. Consequently, the current law governing the right s of individuals with disabilities in Tanzania was not followed by the implementation policy, to implement those rights including inclusive education.³¹⁷

However, this legal position differs from Kenya which has much incorporated the right to education for individuals with physical disabilities into the Constitution as among of the human rights provisions. Therefore, Kenya being ahead of Tanzania in the protection of the right to education for those with disabilities hence it has incorporated most of the right to education among of the basic rights into the constitution, the education Act, as well as Kenyan 2030 Vision.

From the discussion in the above chapters, the researcher reveled that, Tanzania current laws and Policies do not align with international commitments, specifically under article 24 of the CRPD as well as Salamanca Statement of Action on Special basic need, the Universal Declaration on Human Rights, the Word Declaration on Education, the United Nations Covenant on social economic and cultural rights, which inclusively requires and

³¹⁷Persons with Disabilities Act of 2010.

mandates member states to enact domestic legislations which terms the right to education as among of the basic human right. Often lack of specificity enforcement, and adequate resources, which hamper their effectiveness. These shortcomings lead to barriers in access, persistent discrimination, and regional disparities, ultimately limiting the educational opportunities for individuals with physical disabilities. To truly fulfill the promise of inclusive education, there is an urgent need for legal reforms, stronger enforcement mechanisms, increased funding, and greater awareness and advocacy. By addressing these issues, Tanzania can move closer to ensuring that all individuals, regardless of physical ability, can fully exercise their right to education.

7.3 Recommendations.

The study's findings and recommendations seek to provide a basis for practical and workable proposals that will enhance efficiency in the justice sector.

1. Article 11-(2) of the Constitution of the United Republic of Tanzania, generalizes this right to all people under the fundamental objectives and directives of state policy since it is not enforceable under article 7-(2) of the Constitution.
2. It is recommended for a single organ or Ministry responsible for a child right to education protection that, despite of the Ministry of Education also the Ministry of Health and the Ministry of Labor also plays a vital roles in addressing the broader needs of persons with disabilities which can indirectly impact their access to education.

3. The Minister responsible for education should develop implementation Policies that ensure equal access, realization, and enjoyment of the right to education for students with physical disabilities, as learning institutions lack clear guidelines on admitting and providing accessible environments.
4. The Tanzanian Government, with the support of the Ministry of Constitution, Legal Affairs, and Foreign Affairs, should ratify the Optional Protocols to the International Covenant on Economic, Social, and Cultural Rights, the Convention on the Rights of the Child, and the African Charter on Human and Peoples' Rights to address the violation of education rights.
5. In compliance with the Convention on the Rights of Persons with Disabilities and the Salamanca World Conference on Special Education Needs, Tanzania shall ensure that Persons with Disabilities are not excluded from the general education system on the basis of disability, and that children with disabilities are not excluded from free and compulsory primary education, or from secondary education, on the basis of disability.
6. The Government of Tanzania has duty bound to provide reasonable accommodation in accordance with articles 2 and 5 of the Convention to make sure that, Persons with physical disabilities can access an inclusive, quality and free primary education and secondary education on an equal basis with others.
7. The Government of Tanzania in implementing the right to inclusive education as provided by General Comment No. 4 (2016) shall ensure

accessible school transportation is provided to all students with disabilities where transportation options are limited due to social or economic barriers.

8. States should provide training for teachers to educate children with disabilities in regular Schools, and ensure the necessary equipment and supports are available to ensure equal
9. States should review and amend laws affecting disabled children which are not Compatible with the principles and provisions of the CRC (Convention on the Rights of the Child), for example, Legislation which do not comply with inclusive education.
10. Tanzania has to ratify the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights and the Optional Protocol to the Convention on the Rights of the Child both of which allow individuals to make formal complaints to the relevant UN treaty body.

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