

## THE RIGHT TO EDUCATION OF CHILDREN WITH DISABILITIES IN MAURITIUS: AN ASSESSMENT OF THE STATUS OF EDUCATION

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**Abstract:** *This article aims to assess the status of the right to education of children with disabilities in Mauritius. Today countries are much concerned with achieving what is coined as 'Quality' or 'World Class Education'. Mauritius as well is present in the quest to deliver the best education to its citizens. In this essence, new blue-prints are injected into the current educational trends to meet the ever-demanding needs- for instance in terms of adherence to technology. Like all children, those with disabilities are also concerned when it comes to the enjoyment of the right to education. The international and regional instruments to which Mauritius is party binds it to protect and promote human rights including the right to education of children with special needs. Likewise, these children require special care and attention, along with schools equipped with the proper facilities. Though appalling, given the fact that we do not have alternative educational programmes for children with disabilities, some are left with no choice than to attend day-care centres. In this way, many children suffering from physical and mental impairments are deprived of their right to education. To this effect, the training of educators to teach children with disabilities and the provision of adequate facilities in schools should be prioritised. The protection and promotion of the right to education of all children including those with disabilities is vital for our economy. In an initial phase, the funding required may appear to be colossal. However, on an annual basis if budget funds are injected- the full realisation of the right to education of children with disabilities will be achieved. As a developing State, Mauritius needs to constantly vie for supremacy for the promotion and protection the right to education of children with disabilities both in terms of financing and undertaking of legislative steps.*

**Keywords:** Education, Children, Mauritius

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### 1. INTRODUCTION

Being a welfare state as well as State party to almost all international human rights instruments, Mauritius tries its best to ensure that each child is able to enjoy his right to education irrespective of any ground of discrimination. For instance, along with free education, even transport facilities are free for all the students. All new State Secondary Schools are already equipped with ramps and toilets for students with disabilities. Nevertheless, despite the fact that education is free and compulsory, yet children with disabilities are somehow denied of their right to education.

It has been found that those who are denied their right to education are mostly children with disabilities whereby around 97% of them do not know how to read nor write.<sup>1</sup> Further to this, UNESCO has pointed out in its briefing paper on "Children out of School" that in developing countries, it is mostly the disabled children who do not go to school and also "PERSONS WITH DISABILITIES ARE LESS LIKELY TO ATTEND SCHOOLS AND THEY HAVE RELATIVELY LESSER YEARS OF SCHOOLING COMPARED TO PERSONS WITHOUT DISABILITIES."<sup>2</sup>

Moreover, according to the Committee on the Rights of the Child, Mauritius tends to rely a lot on NGOs to provide for specialised services to children with disabilities without the necessary support, monitoring and regulatory guidance of these NGOs.<sup>3</sup> Also, since the children with disabilities are rejected and stigmatised when going to schools, very often they are not even able to reach till Standard Six (now Grade 6) to obtain a Certificate of Primary Education (now the Primary School Achievement Certificate (PSAC)). This, in turn, is very problematic since there are no alternatives to this certificate for children with mental disabilities<sup>4</sup>. It is to be noted that very often children with intellectual disabilities attend daycare centre since they cannot attend schools<sup>5</sup>.

Besides, the Committee added that due to the slow implementation of the 2006 official policy, this has widened the segregation of the child with disabilities at schools which consequently deprive the latter of any form of education.<sup>6</sup> Bunwaree and Kasenally have further added that:

*“SPECIAL SCHOOLS ARE LIMITED, THEY ARE MOSTLY RUN BY NGOS WHICH ARE PARTLY GRANT-AIDED, THERE IS A LACK OF TRAINED STAFF, NO MEDICAL FOLLOW-UP AND NO SPECIAL CURRICULUM. MOST OF THESE SCHOOLS ARE FOUND IN URBAN AREAS, WHICH PROVED TO BE A DISADVANTAGE TO IMPAIRED CHILDREN LIVING IN RURAL AREAS BECAUSE OF TRANSPORT FACILITIES.”<sup>7</sup>*

In addition, another issue is that parents of children with disabilities do not have the required support. For that reason, they are easily influenced by the discriminatory and negative attitudes of the society they live in towards these children. Therefore, this has prevented those parents from participating actively in the social integration of their children.

Last but not least, the disabled child who could not have access to education encounters not only short term problems but also long term ones since if he is not educated, he will be more likely to be excluded from society as he does not possess the required level of knowledge and skills for the enhancement of his human capital formation<sup>8</sup>. Consequently, he will be excluded and viewed as different from the ‘normal’ persons due to his incapacity of bringing his contribution in the country’s progress and development.

This study is justified mainly on the basis that even though there have been tremendous developments in the educational system of Mauritius over the years starting from the colonial times till even now, today’s educational system still has some lacunae whereby not all groups of children have benefitted from the free access to education. Amongst those groups which have been and are still being excluded are mainly the children with disabilities who are marginalised by no fault of their own. They are not ‘different’ from any child, but instead, they have different ways of learning and have different abilities. That is why, while it is the moral duty of each individual being a duty-bearer to represent the underrepresented members of our society; it represents at the same time a legal duty for Mauritius as a State party to all those international human rights treaties advocating for the right to education of the disabled child. Hence, together, we will be able to realise the dream of the disabled child of attending school like any other child.

It is therefore high time for Mauritius to review the compliance of its obligations towards the access to education for the child living with a disability based on equality of opportunity.

## **2. THE RIGHT TO EDUCATION OF THE CHILD LIVING WITH A DISABILITY**

The right to education, especially for the child living with disabilities from an international perspective of a State party's obligations, has not received that much attention and thus not much is written specifically on this topic<sup>9</sup>. Disability per se is mostly seen by society from a negative angle<sup>10</sup>. That is why Wolfsenberger stated in his first publication about normalisation that disability was often referred to as "shame" and social stigma.<sup>11</sup> He further argued that the disabled persons were 'dehumanised', viewed and treated differently whereby they were said to be incapable of socialising and being educated.

As per Oliver, people with disabilities are regarded as "unfortunate" because of their inability to enjoy material and social benefits of modern society like others<sup>12</sup>; "useless" due to their inability to contribute for the economic progress of their country; different, oppressed and also "sick"<sup>13</sup>. He then added that the exclusion of children with disabilities from a country's educational system is due of the country's failure to provide for the appropriate accommodation for them at schools or simply because they are stigmatised and marginalised by the society they live in<sup>14</sup>. Hes, therefore, reiterated that since the country does not provide the disabled children with the appropriate support and framework to ensure the protection of their respective rights as citizens, they have consequently been excluded from the educational system as well as from the society itself.<sup>15</sup> In other words, this implies that although children with disabilities have the right to attend mainstream schools like any other children, as per their parents, schools have rejected them mainly on the basis of inadequate accommodation of them.

The same line of reasoning has been adopted by Bappoo in her message addressing this particular issue in the discussion where she admits that *"IT IS AN UNDENIABLE FACT THAT PERSONS WITH DISABILITIES ARE OFTEN MARGINALIZED, DISCRIMINATED AGAINST AND SUFFER PREJUDICES."*<sup>16</sup> They have been suffering since long and are still being victimised. For her, society itself is the basic cause. Additionally, the path towards equality of all, especially for persons with disabilities, has been denied occluded in all spheres of life including education<sup>17</sup>. This, therefore, secludes persons with disabilities from the society whereby they gradually believe that they cannot achieve anything in life because of the countless obstacles they face.

The right-based model raises the main issue of the right of parents to choose which school their disabled child will attend. Hence, those who argue that all children irrespective of any disability have the right to be educated in a mainstream school will strongly support the closure of all specialised schools. This will be problematic as parents will be deprived of their right to choose the type of school that better suits the needs of their offspring. In short, while some advocate for inclusive education, others may still find that special schools are better.<sup>18</sup>

Ofori-Addo points out that the parents of children with disabilities are seldom involved in the assessment or decision-making process of the country although these parents are better suited to provide the required advice than anybody else<sup>19</sup>. But instead, the government encourage parents to send their children to special schools where the latter are then assessed as to whether they can be accommodated in the mainstream educational system and thus which specific school they should attend.<sup>20</sup>

It has also been highlighted that though these children have a right to education the Ministry of Education has so far not been able to integrate all of them in the mainstream primary and secondary institutions. Not only do they need special care but also specialist teachers<sup>21</sup>. Moreover, the Education Act 1957 makes provision for the education of such children.<sup>22</sup>

The disability prevalence for the Island of Mauritius, in terms of age and sex, for the 2000 & 2011 Population Censuses are the following. For the year 2000, the disability prevalence of the age group, under 10 years, was 0.8 per cent for both male and female while for the age group, 10-19 years; it was 1.3 per cent for both sexes. As for the Population Census of 2011, the disability prevalence was 0.2 per cent for both male and female under the age of 10 and 0.3 per cent for both sexes of the 10-19 age groups. Similarly, as per the 2000 & 2011 Population Censuses for the Island of Rodrigues, the disability prevalence by age and sex for the year 2000 was 1.4 per cent for those under 10 and 2.0 per cent for the 10-19 age groups while for 2011, it was 0.4 per cent for those under 10 and 0.5 per cent for the 10-19 age groups. Hence, statistically, this represents a considerable increase in the number of disabled children over a decade for both Mauritius and Rodrigues.<sup>23</sup>

### *2.1 Types of schools for children with disabilities*

There exist three different types of education systems for a child with disabilities. They are inclusive education, integrated education and special education. Inclusive education is defined by the General Comment No. 9 (2006) of the Committee on the Rights of the Child as *“A SET OF VALUES, PRINCIPLES AND PRACTICES THAT SEEKS MEANINGFUL, EFFECTIVE, AND QUALITY EDUCATION FOR ALL STUDENTS, THAT DOES JUSTICE TO THE DIVERSITY OF LEARNING CONDITIONS AND REQUIREMENTS NOT ONLY OF CHILDREN WITH DISABILITIES, BUT FOR ALL STUDENTS.”*<sup>24</sup>

As per the General Comment No. 4 of the Committee on the Rights of Persons with Disabilities, integrated education is defined as *“A PROCESS OF PLACING PERSONS WITH DISABILITIES IN EXISTING MAINSTREAM EDUCATIONAL INSTITUTIONS, AND REQUIRING THEM TO ADAPT AND ACCOMMODATE TO A PRE-DETERMINED ENVIRONMENT”* while segregated or special education is defined as *“PROVISION OF EDUCATION IN SEPARATE ENVIRONMENTS DESIGNED TO RESPOND TO A PARTICULAR OR VARIOUS IMPAIRMENTS, IN ISOLATION FROM STUDENTS WITHOUT DISABILITIES.”*<sup>25</sup> The Committee on the Rights of Persons with Disabilities is thus clear about what integrated education should be entailed for children with disabilities.

Special Education Needs schools for children with disabilities or Specialised Schools (Ecoles Spécialisées) are also known as SEN schools in Mauritius. Accordingly, section 2 of the Education Act 1957 provides a clear definition of SEN schools as *“A SCHOOL WHICH PROVIDES SPECIALISED EDUCATION TO LEARNERS WITH DISABILITIES OR STUDENTS HAVING LEARNING DIFFICULTIES AND REQUIRING ADDITIONAL SPECIALISED SERVICES.”* The law is silent over the concept of integrated education and the need for mainstreaming.

### *2.2 Statistical overviews*

As of March 2015, there were 69 SEN Schools in Mauritius registered with the Ministry of Education and Human Resources, Tertiary Education and Scientific Research (Education Statistics, 2015). Out of this total, there were 13 government integrated units and

56 NGO-run SEN schools. This represents a considerable increase in the overall number of SEN schools since in 2011, there were only 50 such schools.<sup>26</sup>

However, for March 2016, there were 65 Special Education Needs schools in the Republic of Mauritius duly registered with the Ministry of Education and Human Resources, Tertiary Education and Scientific Research.<sup>27</sup> The number of government integrated units was the same, that is, 13 while the number of schools run by NGO remarkably fell to 52.

But as of March 2017, the total number of duly registered SEN schools increased to 70 for Mauritius (Education Statistics, 2017). This includes 22 government integrated units and 48 SEN Schools run by NGOs along with the Roman Catholic Education Authority.

Concerning Rodrigues, from 2015 to 2017, the number of SEN schools remained unchanged. There is only 1 SEN School run by NGO and the number of government integrated unit is nil. Hence, for the Republic of Mauritius, that is, for both the island of Mauritius and that of Rodrigues, in 2015, the total number of SEN schools amounted to 70 with 13 government integrated units and 57 schools run by NGOs. For the year 2016, the total was 66 with 13 government integrated units and 53 NGO-run SEN schools. Finally, for 2017, the total number of SEN schools was 71 with 22 government integrated units and 49 NGO-run SEN schools.

It can thus be observed that between 2015 and 2017, in the context of the island of Mauritius, the number of SEN schools run by NGOs have decreased while the number government integrated units has risen. It is also noteworthy that in Mauritius, the SEN schools are widely spread out across the island, be it in terms of districts or zones. As for Rodrigues Island, for the targeted period, the figures were constant with zero government integrated units and only 1 NGO-run SEN school.

### *2 2 1 Enrolment in SEN schools by age and sex*

Statistics pertaining to enrolment in SEN schools by age are provided for the age group starting with 3 years old to 21 years of age and above. Hence, for the purpose of our work on “children”, the total enrolment of all the age groups will be set out while the emphasis will be laid on the age groups of 3-18 years old.

For the Island of Mauritius, the number of students enrolled in SEN schools for the year 2015, was a total of 2,263 with 1,451 male and 812 female. In 2016, there were a total of 2,462 with 1,569 male and 893 female while in the year 2017, there was a total of 2,540 with 1,646 male and 894 female. For the Island of Rodrigues, the total number of students enrolled in SEN schools in 2015 was 38 with 26 male and 12 female. The total number of enrolment for the year 2016 was 53 with 37 male and 16 female whilst in 2017, it was 54 with 35 male and 19 female.<sup>28</sup>

Hence, for the Republic of Mauritius, the total number of students admitted to SEN schools was 2,301 with 1,477 male and 824 female; 2,515 with 1,606 male and 909 female; 2,594 with 1,681 male and 913 female for the years 2015, 2016 and 2017 respectively. Regarding the enrolment in SEN schools for the age groups of 3-18 years old, the figures showed a total of 1949, 2197 and 2337 for the years 2015, 2016 and 2017 respectively.<sup>29</sup>

Therefore, these statistics give us a clear indication that from 2015 to 2017, the total number of enrolment in SEN schools for both Mauritius and Rodrigues has been increasing. Besides, it can be pointed out that from 2015-2017, the number of male enrolment in SEN schools is much more than that of female enrolment. The enrolment of male students has



been increasing way faster than that of female students which have experienced a slow rise over the targeted period.

### **2 3 Government Expenditure**

The government expenditure as a whole involves the amount of money injected in education which in turn, includes the financing of SEN schools. Hence, the total government expenditure for the financial years 2015/2016, 2016/2017 along with that of 2017/2018 are estimated as follows: (i) financial year 2015/2016: Rs 124,745 million, out of which, Rs 15,807 million (12.7%) has been allocated to education and training<sup>30</sup>, (ii) financial year 2016/2017: Rs 132,164 million, out of which, Rs 16,791 million (12.7%) has been allocated to education and training<sup>31</sup>; and (iii) financial year 2017/2018: Rs 147,232 million, out of which, Rs 18,214 million (12.4%) has been allocated to education and training<sup>32</sup>. Therefore, from the above statistics, it can be analysed that each year the share of the budget allocated to education and training by the government is on an incremental trend.

#### **2 3 1 Budgetary allocation**

The total budget on education and training has been allocated as follows: (i) financial year 2015/2016: 53% to secondary education, 24% to primary education, 8% to tertiary education, 3% to technical and vocational education, 2% to pre-primary education and the remaining 10% to other expenses<sup>33</sup>, (ii) the financial year 2016/2017: 50% to secondary education, 27% to primary education, 7% to tertiary education, 3% to technical and vocational education, 2% to pre-primary education and the remaining 11% to other expenses<sup>34</sup>; and (iii) financial year 2017/2018: 51% to secondary education, 25% to primary education, 7% to tertiary education, 3% to technical and vocational education, 2% to pre-primary education and the remaining 14% to other expenses<sup>35</sup>.

Additionally, it has been observed that the four-fold increase in the budget for SEN for the period 2005-2006 (Rs 4 million) to Rs 18 million for the period 2008-2009 has been in the pursuit of achieving parity in the treatment of pupils in SEN schools as compared to those in the mainstream schools.<sup>36</sup>

Therefore, the government is making an effort for children with disabilities to enjoy their right to education just like other children. In this essence, it is also fulfilling its obligations under international and well as regional instruments promoting and protecting the rights of children with disabilities.

#### **2 3 2 Grant-in-Aid**

The Education Act provides in section 34:

*“GRANTS IN AID FROM THE CONSOLIDATED FUND MAY BE MADE TO NON-GOVERNMENT PRIMARY OR SECONDARY SCHOOLS INCLUDING SPECIAL EDUCATION NEEDS SCHOOLS AND TECHNICAL AND VOCATIONAL INSTITUTIONS, OR TO ASSOCIATIONS AND SOCIETIES UNDERTAKING ADULT OR FURTHER EDUCATION SERVICES, FULFILLING THE PRESCRIBED CONDITIONS.”*<sup>37</sup>

The Grant in Aid represents an annual sum earmarked for NGOs to cover part of their day to day running costs. The Grant-in-Aid Formula 2017 includes a list of items, their mode of payment, the amount and the number/ratio.<sup>38</sup> Besides, other financial help is provided to NGOs in terms of Ad Hoc Assistance and micro project funding. It can be analysed that the

legislator has catered for the funding of private schools which also include specialised schools for children with disabilities.

### **2 3 3 Social Benefits**

Apart from funding SEN education, a number of social benefits are also provided to children with disabilities themselves by the Ministry of Social Security, National Solidarity & Reform Institutions<sup>39</sup>. Thus, to assist in the education of children with disabilities as well as to encourage parents to send their disabled children to schools (IU or SEN schools), the Ministry of Social Security, National Solidarity & Reform Institutions provides the following facilities<sup>40</sup>:

(i) Refund of bus fares for one accompanying parent of children with disabilities attending schools/daycare centres. In case the child is severely disabled and travels by special means of transport, bus fare for both the child and the parent is refunded. It is to be noted that payment is made based on attendance submitted by the schools<sup>41</sup>.

(ii) Children with disabilities are offered free Bus Pass depending on three main eligibility criteria<sup>42</sup>.

(iii) Children with disabilities also benefit from financial assistance under the National Pensions Act by way of Basic Invalidity Pension (BIP) and a carer's allowance to beneficiaries of BIP. As at January 2018, the BIP was Rs 5,810 per month and the carer's allowance was of Rs 2,500 per month.<sup>43</sup>

(iv) Equipment like wheelchairs, hearing aids and white canes are provided free of charge to disabled children to enhance their mobility<sup>44</sup>.

In addition, Lam Hung provided for some important statistics pertaining to the number of disabled children below 15 years of age, who were benefiting from a BIP as at June 1999 in Mauritius.<sup>45</sup> It was divided into children with physical handicap having a total of 728 and children with intellectual impairment amounting to a total of 462. As for Rodrigues, for the two categories as in Mauritius, the total was of 61 and 37 respectively for June 2000.

The personnel in SEN schools are namely the teaching staff, the administrative and ancillary staff as well as the medical and Para-medical staff. The teaching staff rose from a total of 387 in 2015 to a total of 411 in 2017. Similarly, the number of administrative and ancillary staff increased from 199 in 2015 to 258 in 2017. However, for the medical and Para-medical staff, it can be inferred that there has been a decrease from a total of 108 for the year 2015 to only 64 for the year 2017. Yet, the overall number of personnel in SEN schools has seen a rise in the period of 2015-2017. The figures show that the total number of personnel for the year 2015 was 694, 698 for the year 2016 and finally, 733 for the year 2017.<sup>46</sup> On basis of observation, it can be scrutinised that despite there has been an increase in the overall number of staffs in SEN schools, however, the decrease in a number of para-medical staff should be a matter of concern- because these children often require urgent medical assistance.

### **2 4 Training of SEN teachers**

To educate children with disabilities, training of teachers is crucial. Thus, teachers are trained by the Mauritius Institute of Education (MIE) as well as by some NGOs. The MIE has its Special Educational Needs Department and has been offering programmes for the SEN teachers since 2011. The programmes are Certificate in Special Education, Educator's

Licence in Special Education, Diploma in Special Education Needs and Foundation Course SEN. The Certificate in Special Education is a 2 years course while the duration for the Foundation Course in Special Education which is a non-award course for educators, support personnel or cadres working with children with disabilities and/or SEN is 45 hours over 1 year (during school holidays). It is noteworthy that to date, the MIE has trained a significant number of SEN teachers. Psychological Foundations for SEN, Social and life skills, Inclusive and Special Education and Remedial strategies for learners with learning difficulties are amongst the modules of the above- listed programmes of the MIE.

Besides the various NGOs, the Global Rainbow Foundation (GRF) has taken the initiative of empowering teachers across the island so they have the necessary and additional skills to interact with special children at various schools. In 2015, the GRF SEN Programme has organised the GRF SEN School Teacher Training Programme and the Disability Inclusion: Train the Trainers Seminar.

Based on all the empirical evidence, it can be deduced that the role and contribution of NGOs in promoting and ensuring that children with disabilities have access to education over time and to date is immense. Nonetheless, one cannot deny the support and all the initiatives taken by the government which has seen a rise over the years. Yet, equality for all in the education system and inclusive education for all children including those with disabilities are still to be implemented by the government.

### **3. OBLIGATIONS OF THE STATE OF MAURITIUS UNDER INTERNATIONAL LAW**

#### **3 1 Universal Declaration of Human Rights**

Article 26 of the Universal Declaration of Human Rights (UDHR) provides that *“EVERYONE HAS THE RIGHT TO EDUCATION”*. It further provides that *“EDUCATION SHALL BE FREE, AT LEAST IN THE ELEMENTARY AND FUNDAMENTAL STAGES.”*<sup>47</sup> Article 1 is equally important since it demonstrates the principle of non-discrimination and equality as well as the obligation of every individual to respect the rights of others. It states that *“ALL HUMAN BEINGS ARE BORN FREE AND EQUAL IN DIGNITY AND RIGHTS. THEY ARE ENDOWED WITH REASON AND CONSCIENCE AND SHOULD ACT TOWARDS ONE ANOTHER IN A SPIRIT OF BROTHERHOOD.”*<sup>48</sup>

The UDHR despite being a declaration it is now recognised as one of the sources of international law<sup>49</sup>. To this effect, member states have a duty to abide by its provisions. On the matter of the right to education, States have an undefined duty to respect the right to education of its citizens and the initial education stages have to be free. Further, Article 1 of the UDHR emphasises on the importance of non-discriminatory and equal treatment of all individuals which imply that children with disabilities also should be afforded equal treatment.

#### **3 2 International Covenant on Economic, Social and Cultural Rights**

The International Covenant on Economic, Social and Cultural Rights (ICESCR) deals with the economic, social and cultural rights referred to as the second generations of rights. Mauritius has ratified the ICESCR since 12<sup>th</sup> December 1973. The right to education is provided in Article 13 which reiterates the obligation of State parties to ensure that every individual enjoys the right to education. It further points out an important aspect which is :



*“...EDUCATION SHALL ENABLE ALL PERSONS TO PARTICIPATE EFFECTIVELY IN A FREE SOCIETY, PROMOTE UNDERSTANDING, TOLERANCE AND FRIENDSHIP AMONG ALL NATIONS AND ALL RACIAL, ETHNIC OR RELIGIOUS GROUPS, AND FURTHER THE ACTIVITIES OF THE UNITED NATIONS FOR THE MAINTENANCE OF PEACE.”<sup>50</sup>*

Besides, the obligations of State parties are such that in order for the full realisation of the right to education, primary education shall be compulsory and available free to all (Article 13(2)(a)). As per Article 2(1) of ICESCR:

*“EACH STATE PARTY TO THE PRESENT COVENANT UNDERTAKES TO TAKE STEPS, INDIVIDUALLY AND THROUGH INTERNATIONAL ASSISTANCE AND CO-OPERATION, ESPECIALLY ECONOMIC AND TECHNICAL, TO THE MAXIMUM OF ITS AVAILABLE RESOURCES, WITH A VIEW TO ACHIEVING PROGRESSIVELY THE FULL REALIZATION OF THE RIGHTS RECOGNIZED IN THE PRESENT COVENANT BY ALL APPROPRIATE MEANS, INCLUDING PARTICULARLY THE ADOPTION OF LEGISLATIVE MEASURES.”<sup>51</sup>*

This indicates that though States have duties to ensure that everyone enjoys the rights enshrined in the ICESCR, they can progressively fulfil them. The element of State sovereignty is also present as stated in Article 2(3) which provides that *“DEVELOPING COUNTRIES, WITH DUE REGARD TO HUMAN RIGHTS AND THEIR NATIONAL ECONOMY, MAY DETERMINE TO WHAT EXTENT THEY WOULD GUARANTEE THE ECONOMIC RIGHTS RECOGNIZED IN THE PRESENT COVENANT TO NON-NATIONALS.”<sup>52</sup>*

Since socio-economic rights have resource implications, therefore member states can progressively realise these rights. However, not all aspects of a right are to be progressively realised- some do require the government to take immediate steps. Because people migrate, in a country, there are very often non-nationals who reside temporarily while being on working permit or doing business. Owing to the principle of state sovereignty, the ICESCR does not burden developing countries to compulsorily cater for the realisation of socio-economic rights of non-citizens. It is, therefore; up to the State in question to decide the way it would guarantee these rights to non-nationals.

### **3 3      *Convention against Discrimination in Education***

In 1970, Mauritius has notified in succession the Convention against Discrimination in Education. In the Vienna Convention on Succession of States in respect of Treaties, a *“‘NOTIFICATION OF SUCCESSION’ MEANS IN RELATION TO A MULTILATERAL TREATY ANY NOTIFICATION, HOWEVER PHRASED OR NAMED, MADE BY A SUCCESSOR STATE EXPRESSING ITS CONSENT TO BE CONSIDERED AS BOUND BY THE TREATY.”<sup>53</sup>* This has resulted to the independence of Mauritius in 1968 from the British.

Article 3(b) of the Convention against Discrimination in Education provides that to eliminate and prevent discrimination, States Parties should ensure through its legislations that there is no discrimination in the admission of pupils to educational institutions. According to Article 4 of the same Convention, the Member States *“UNDERTAKE FURTHERMORE TO FORMULATE, DEVELOP AND APPLY A NATIONAL POLICY WHICH, BY METHODS APPROPRIATE TO THE CIRCUMSTANCES AND TO NATIONAL USAGE, WILL TEND*

*TO PROMOTE EQUALITY OF OPPORTUNITY AND OF TREATMENT IN THE MATTER OF EDUCATION.*” Besides, no reservation is allowed to this Convention. Additionally, it can be observed that nowhere in this Convention, has mention been made for special schools and same are not even included in the list provided in Article 2 relating to situations where no discrimination is constituted.

Since there is no provision in the above Convention concerning special schools, therefore this does not force state parties to provide for special schools for children with disabilities. When children with disabilities are not afforded access to specialised educational institutions, undoubtedly, they are denied their right to education. The more so, in developing countries these children very often have no choice than to attend daycare centres rather than going to special schools. The reason behind is that the setting up of specialised schools constitute additional expenditures to the state and it is very often difficult for countries which are still in the developing phase.

### **3 4 UN Convention on the Rights of the Child**

Mauritius is party to the Convention on the Rights of the Child (CRC) since 1990. It is interesting to note that ‘disability’ *per se* is a prohibited ground for discrimination as set out in Article 2 of the CRC. Hence, the CRC is one amongst the few Conventions where the definition of ‘discrimination’ includes ‘disability’ as a ground. The right to education is provided for at Articles 28 and 29(1)(a) of the Convention restating the duties of States which include the need to make educational and vocational information and guidance available and accessible to all children. Moreover, Article 23 concerns children with disabilities, in particular, they “*HAVE THE RIGHT TO SPECIAL CARE AND SUPPORT, AS WELL AS ALL THE RIGHTS IN THE CONVENTION, SO THAT THEY CAN LIVE FULL AND INDEPENDENT LIVES.*”

The provisions of the CRC, notably Articles 23, 28 and 29(1)(a) along with provisions of other international human rights instruments were cited in the case of *Western Cape Forums for Intellectual Disability v The Government of the Republic of South Africa*.<sup>54</sup> In this case, children with severe and profound intellectual disabilities (that is, having IQ levels of 20-35 and less than 20 respectively) were not provided education by the state and had to depend on NGOs which could not accommodate for all these children with the meagre subsidies provided by the State. It was hence held that there had been violations of the rights of these children by the State without any valid justification for the infringement of these rights. The Court further found that the right to dignity of these children equally encroached since they were marginalised, ignored and stigmatised.

From the above case, it can be analysed that these children with intellectual disabilities had faced discriminatory treatment. The government should have allocated a proper subsidy, through NGO’s for these children to enjoy their right to education. Because of these austere violations, the Court has stressed on the fact that it will monitor the progress of steps taken by the government to protect and promote the right to education of the victims<sup>55</sup>.

### **3 5 UN Convention on the Rights of Persons with Disabilities**

The Convention on the Rights of Persons with Disabilities (CRPD) has been ratified by Mauritius in 2010 but the state has only signed the Optional Protocol to the CRPD recognising the competence of the Committee in 2007. The CRPD is, in fact, a response to

the systematic exclusion and dehumanisation of persons with disabilities. At the very outset of this Convention, in Article 4, the general obligations of State parties are stated. Article 7 specifically provides for children with disabilities where State parties are bound to take all necessary measures to ensure the full enjoyment by children with disabilities of all human rights and fundamental freedoms on an equal basis with other children as well as the involvement of the latter in all matters affecting them.

Article 24 deals with the Right to Education where the principles of non-discrimination and equality have been reiterated. Much emphasis is laid on the need for State parties in ensuring an inclusive education system at all levels. However, Mauritius has made a reservation on Article 24(2)(b) which states that “*STATE PARTIES SHALL ENSURE THAT PERSONS WITH DISABILITIES CAN ACCESS AN INCLUSIVE, QUALITY AND FREE PRIMARY EDUCATION AND SECONDARY EDUCATION ON AN EQUAL BASIS WITH OTHERS IN THE COMMUNITIES IN WHICH THEY LIVE.*” This reservation per se is contradictory since while on one side, the CRPD is emphasising on full and equal participation in education and has recognised that an inclusive education system is a root for an inclusive society, yet on the other side, by allowing such reservation, the object and purpose of the CRPD is somehow defeated<sup>56</sup>.

Besides, there is a recent ongoing case, the case of *Stoian v. Romania* at the European Court of Human regarding the lack of access to inclusive education, specifically the lack of support and the denial of reasonable accommodation in the Romanian education system<sup>57</sup>. This case is believed to provide some impactful jurisprudence on key education issues including a broad interpretation of inclusive education, the scope and scale of a State’s duty to accommodate, the extent of this duty in countries that lack sufficient resources, the impact of exclusion and the pressure parents experience.

In this case, even after years of litigation, the victim has sadly remained without remedy. The right to inclusive education to children with disabilities is still something which has not been realised yet. Therefore, even though the State, in that case, was a signatory to the UN CRPD, children with disabilities were still facing with discrimination when it comes to the enjoyment of their right to education.

### **3 6     1993 Standard Rules on the Equalisation of Opportunities for Persons with Disabilities**

The main purpose of these rules is to enable policymakers to create technical and human rights cooperation within and among States and between international organizations and governmental agencies<sup>58</sup>. Though these rules are not mandatory yet States have a strong moral and political commitment in implementing measures for the equalization of opportunities for persons with disabilities.

Hence, according to the rules, States should ensure that up-to-date information is available and accessible to persons with disabilities and all other concerned persons to raise awareness (Rule 1), that disability aspects are included in all relevant policy-making and national planning while involving the concerned individuals in all decision-making processes (Rule 14) and the legislations are enacted for better protection of persons with disabilities (Rule 15).

Rule 6 is specifically on Education which provides that States should ensure that “*THE EDUCATION OF PERSONS WITH DISABILITIES IS AN INTEGRAL PART OF THE*

*EDUCATIONAL SYSTEM*” and should be part of national educational planning, curriculum development and school organisation. It is further stated in Paragraph 6 that for States to accommodate children with disabilities in the mainstream, it should have a clearly stated policy, understood and accepted at the school level and by the wider community, allow for curriculum flexibility, addition and adaptation and provide for quality materials, ongoing teacher training and support teachers. Additionally, the main purpose of special education has been clearly explained as preparing students for education in the general school system where the latter cannot yet adequately meet the needs of these children. States should even aim for the gradual integration of special education services into mainstream education albeit that in some cases, special education may be considered to be the most appropriate form of education for some students with disabilities.

### **3 7      *Regional Human Rights Instruments- African Level***

Mauritius is State party to several regional human rights treaties like the African Charter on Human and Peoples’ Rights (ACHPR) and the African Charter on the Rights and Welfare of the Child (ACRWC). Unlike the Conventions at the UN level, the ACHPR recognises all generations of rights, that is, the first generation of rights (civil and political rights), the second generations of rights (socio-economic and cultural rights) as well as the third generations of rights (such as the Right to Development). The right to education is enshrined in Article 17 while the principles of non-discrimination and equality are provided in Articles 18(3) and 19 with a specific mention for children with disabilities pertaining to their right to special measures of protection in keeping with their physical or moral needs in Article 18(4). Mauritius ratified the ACHPR on the 19<sup>th</sup> June 1992.

Likewise, the right to education is provided for in Article 11 of the ACRWC whereby the obligations of the States have also been highlighted. There is a specific provision for children with disabilities in Article 13 which underlines the distinct duties of States with regards to the rights of these children in achieving the fullest possible social integration, individual development, cultural and moral development of the latter. Mauritius is a party to the ACRWC since 14<sup>th</sup> February 1992.

Mauritius as a signatory to regional instruments is bound by their provisions. Moreover, the ACRWC has gone further to provide for achieving the fullest possible social integration of children with disabilities. However, in Mauritius this level of integration is blatantly lacking, to reiterate children with disabilities very often attend daycare centres and their participation in society remains very low.

### **3 8      *Other related treaties***

The obligations of Mauritius towards persons with disabilities have been reiterated in the preamble of the Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired, or Otherwise Print Disabled (Appendix 2)<sup>59</sup>. The UDHR and the UNCPRD are also referred to in this Treaty. Emphasis is also laid on the principles of non-discrimination, equal opportunity, accessibility and full and effective participation and inclusion in society. The Marrakesh Treaty is the latest addition to the body of international copyright treaties administered by WIPO. Being a first copyright treaty to include a clear human rights perspective, it caters for both humanitarian and social development dimension and its main goal is to create a set of mandatory limitations and exceptions for the benefit of the blind, visually impaired and otherwise print disabled (VIPs). However, Mauritius has only signed the Marrakesh Treaty on the 28<sup>th</sup> of June 2013.

Hence, it can be inferred that the right to education being present in both soft laws and hard laws, imply certain obligations for Mauritius. Moreover, as it was rightly recognised in the Vienna Conference on Human Rights (1993) that “*ANY DISCRIMINATION, INTENTIONAL OR UNINTENTIONAL, AGAINST PERSONS WITH DISABILITIES IS PER SE A VIOLATION OF HUMAN RIGHTS*”.<sup>60</sup>

#### **4. COMPLIANCE OF THE STATE OF MAURITIUS TO ITS TREATY OBLIGATIONS**

The fact that Mauritius is a dualist State implies that all the conventions that it ratifies on the international plane are not directly incorporated in its domestic system<sup>61</sup>. As pointed out in the case of *Matadeen v Pointu*<sup>62</sup>, a State Party is not bound to incorporate provisions of the international instruments that it ratifies in its domestic system. Furthermore, it was established in *Ex Parte Hurnam Devendranath*<sup>63</sup>, that “[I]T IS A WELL-SETTLED PRINCIPLE THAT UNRATIFIED AND UNINCORPORATED TREATIES ARE OF NO DIRECT EFFECT IN OUR COURTS”.<sup>64</sup>

Hence, it is important to distinguish between a dualist State and a monist State. For monism, international law takes priority over national law where national and obligations should conform to international law and the treaties that are ratified are directly incorporated within the domestic legal system. Unlike monism, dualism implies that “*INTERNATIONAL LAW REGULATES THE RELATIONS BETWEEN STATES WHILE NATIONAL LAWS REGULATE THE RIGHTS AND OBLIGATIONS OF INDIVIDUALS WITHIN STATE*.”<sup>65</sup> Thus, for dualist States like Mauritius, the international treaties that it ratifies should pass through its Parliament to be incorporated in its domestic legal system.

##### **4.1 The Constitution 1968**

Section 2 of the Constitution of the Republic of Mauritius, 1968 (hereafter referred to as the Constitution) provides that “*THIS CONSTITUTION IS THE SUPREME LAW OF MAURITIUS, AND IF ANY OTHER LAW IS INCONSISTENT WITH THIS CONSTITUTION, THAT OTHER LAW SHALL, TO THE EXTENT OF THE INCONSISTENCY, BE VOID*.”

Chapter II (Sections 3-16) of the Constitution enshrines the protection of fundamental rights and freedoms of the individuals, however, it comprises only of the first generation of rights. This implies that the Right to Education is not present in the Constitution. Besides, it was held in *Société United Docks v. Government of Mauritius*<sup>66</sup> that “*THE FUNDAMENTAL RULE IS THAT A CONSTITUTION IS A MEANINGFUL DOCUMENT, ITS VOICE CARRIES HIGHER AND FURTHER THAN THAT OF ORDINARY LEGISLATION AND IT IS UNTHINKABLE TO DISMISS THE SOLEMN PRONOUNCEMENTS OF SECTION 3 AS SO MUCH HOT AIR*.”<sup>67</sup>

In Mauritius, there is the bedrock principle of constitutional supremacy which is enshrined in the Constitution at its Section 2. As our supreme law, the Constitution prevails over any other subsidiary legislation. The Bill of Rights at Section 3 guarantees fundamental human rights and freedoms to all individuals and such rights are of paramount importance and cannot be denied to any citizen.

The word “discriminatory” is defined in Section 16 (Protection from discrimination) of the Constitution which reads as:

“*DISCRIMINATORY MEANS AFFORDING DIFFERENT TREATMENT TO DIFFERENT PERSONS ATTRIBUTABLE WHOLLY OR MAINLY TO THEIR RESPECTIVE*



*DESCRIPTIONS BY RACE, CASTE, PLACE OF ORIGIN, POLITICAL OPINIONS, COLOUR, CREED OR SEX WHEREBY PERSONS OF ONE SUCH DESCRIPTION ARE SUBJECTED TO DISABILITIES OR RESTRICTIONS TO WHICH PERSONS OF ANOTHER SUCH DESCRIPTION ARE NOT MADE SUBJECT OR ARE ACCORDED PRIVILEGES OR ADVANTAGES THAT ARE NOT ACCORDED TO PERSONS OF ANOTHER SUCH DESCRIPTION.*”<sup>68</sup>

Hence, it can be deduced that this definition does not include ‘disability’ as a ground for discrimination. Nonetheless, the Right to Education is provided in the Acts of Parliament, as will be discussed below<sup>69</sup>.

#### **4 2     *The Education Act 1957***

Section 3 of the Education Act confers upon the Minister of Education certain powers and duties as pointed out in *Matadeen v Pointu*<sup>70</sup>. The Minister shall, therefore, have control of the educational system of Mauritius and shall be responsible for the general progress and development of such system. Additionally, Section 37 of the Education Act provides that education is mandatory for all children up to the age of 16.

#### **4 3     *The Equal Opportunities Act 2008***

The Equal Opportunities Act (EOA) establishes the Equal Opportunities Commission to prevent all forms of discrimination as set out in Part II of the Act as well as the Equal Opportunities Tribunal where cases which have not been resolved by the Commission are referred to<sup>71</sup>.

If on one hand, Section 17(1) of EOA provides that there shall not have any discrimination on behalf of any educational institution, however, on the other hand, as per Section 17(3), an educational institution may discriminate against a person based on impairment where that person might require special services or facilities which may not be possible to provide for in some circumstances.

#### **4 4     *The Ombudsperson for Children Act 2003***

The Ombudsperson for Children Act has been enacted to provide for the establishment of an office of Ombudsperson for Children<sup>72</sup>. The Ombudsperson as a statutory and independent body advocates for children’s rights<sup>73</sup>; advises the Minister and other public bodies and institutions on matters relating to promotion and protection of children’s rights<sup>74</sup>; and carries out any such investigations as he/she may decide on complaints concerning the rights of the child<sup>75 76</sup>. Since the establishment of the Office of the Ombudsperson for Children in 2004, children with disabilities have been given due consideration by the Ombudsperson and her investigators who work in close collaboration with NGOs offering services and care to these children<sup>77</sup>. The Ombudsperson intervenes in the field of access to education, leisure, special care, social security and support to parents having a child with a disability.

Besides children with disabilities benefit from the support services offered by the Ministry of Social Security, National Solidarity and Sustainable Development, they also have the support of the Ombudsperson for Children. In furtherance, the Office of the Ombudsperson for Children receives complaints regarding victimisation of children with disabilities<sup>78</sup>.

#### **4 5    *The proposed Disability Bill***

On the 12<sup>th</sup> July 2016, the then Minister of Social Security, National Solidarity and Reform Institutions, Mrs Fazila Jeewa-Daureeawoo, replied to the Private Notice Question (PNQ) of the Leader of the Opposition at the National Assembly. The PNQ concerned the publication of the Report of the UN Committee on the Rights of Persons with Disabilities (CRPD), in particular to the date as to when the Disability Bill will be introduced in Parliament. The Minister hence stated that her ministry has been actively working on a draft Disability Bill which “*AIMS AT PROMOTING AND PROTECTING THE RIGHTS OF PERSONS WITH DISABILITIES, ELIMINATING DISCRIMINATION AGAINST THEM AND INCORPORATING THE PROVISIONS OF THE UN CONVENTION OF THE RIGHTS OF PERSONS WITH DISABILITIES*”.<sup>79</sup> The draft Bill, she said, will shortly be submitted to Cabinet before the document is shared with a broader of the spectrum of stakeholders involving NGOs, Disabled People’s Organisations, Disability Activists, and Civil Society at large.

As at today, the Bill has not yet been presented in the National Assembly<sup>80</sup>. Moreover, in an interview on 3<sup>rd</sup> December 2019, the Minister of Social Security, National Solidarity and Reform Institutions, Mrs Fazila Jeewa-Daureeawoo has highlighted that the Disability Bill is one of the priority and the reading has started with regard to amendments which need to be brought about regarding disability<sup>81</sup>.

#### **4 6    *Observations***

The following observations can be made regarding the compliance and effectiveness of Mauritius to its treaty obligations. Firstly, it is perceived that Mauritius relies heavily on NGOs in providing services and facilities to children with disabilities including education which are its duties to fulfil.<sup>82</sup> The education provided by SEN schools involves a fee to be paid by parents since the subsidies and grants allocated by the government do not suffice. Hence, this raises the question of whether education for children with disabilities is free or not. The over-reliance of Mauritius on NGOs like the Lois Lagesse Trust Fund in providing for educational materials such as Braille Embosser and Tactile View to blind and visually impaired students can be cited as an example.

Secondly, the main problem is that education in Mauritius has always been competitive as stated in *Thandrayen v The State*.<sup>83</sup> This competition can be explained by the fact that each child is in a quest to acquire better education within the sphere of the traditional form of learning. This represents a major hindrance of inclusive education for children with disabilities. To support this argument, there is the recent case of Preetee Daby, a 13 years old blind girl who has been facing so many hurdles in obtaining a secondary school.<sup>84</sup> This, therefore, is not in line with different treaty obligations of Mauritius.

Thirdly, it has been observed that no convention has been wholly incorporated in the national laws of Mauritius but instead only certain provisions. It has also been remarked that the legal provisions regarding the right to education for children with disabilities are very much scattered in different pieces of legislation. Regarding, the reservation placed to Article 24(2)(b) of CRPD, Mauritius ought to have undertaken periodic reviews with consideration to withdraw that reservation. Nonetheless, this periodic review has rarely been taken. Likewise, the duty of State reporting on a periodical basis does not seem to be effectively being enforced by Mauritius since either the reports are due or submitted much afterwards.

Nevertheless, States being States are relatively free on the international plane which lacks the power of sanctions.

However, it is worth mentioning as part of the government policies and as a welfare State, several measures have indeed been taken as the setting up of a Disability Unit. Several implementation measures are in place to achieve progressively the full realisation of the Right to Education (Article 2(1) of ICESCR). As Hung pointed out in her book, the Ministry of Education through the Mauritius Examination Syndicate assist students taking part in national exams like CPE (now PSAC) where not only are the examination papers adapted for students with visual impairment but also those having intellectual impairment and dyslexia are given extra time during examinations<sup>85</sup>.

Moreover, it is indisputable that for certain children, special schools may always be needed but as the provision of special educational treatment within ordinary schools increases, this need is likely to be smaller than at present.<sup>86</sup> Thus, it can be concluded that Mauritius has to a large extent complied with its treaty obligations, yet certain duties remain to be fulfilled. It is important to note that the issue of disability has to date not been decided by any Court or judicial body in Mauritius.

## **5. PROPOSED RECOMMENDATIONS**

In order to better implement its obligations towards access to education for children with disabilities, it is recommended that Mauritius shall withdraw its reservation to Article 24(2) of the UNCRPD which can be withdrawn at any time (Article 46 of CRPD).

It is time for Mauritius either to include the socio-economic and cultural rights including the right to education in Chapter II and 'disability' as a ground for discrimination in Section 16 of its Constitution which is in existence for now 50 years. This will, in turn, ensure constitutional protection of these rights. In this pursuit, it is also highly recommended that Mauritius enacts the Disability Bill which will consequently render implementation more effective.

To ensure that all children enjoy their basic human rights without discrimination, disability inclusion should be mainstreamed in all policies and plans. This applies to education systems, which need to promote inclusion by ensuring the presence, participation and achievement of all children, including children with disabilities. However, it is noteworthy that legislations alone, though important are not enough. Proactive implementation of these laws is mandatory.

A relevant school curriculum should be provided catering for the needs of all children, irrespective of disability or not. The school curriculum should strike a right balance between academic subjects and holistic ones with the promotion of human rights education given the fact that the school is a vital place to start introducing better understanding and respect for other human beings that will in turn aid to eliminate all forms of discrimination and prejudices towards children with disabilities.

Better facilities for slow learners and children with disabilities are a necessity. This can be done by establishing, for example, support units and counselling services. Furthermore, to implement inclusive education for children with disabilities, more resources should be allocated to the provision of transport facilities, adaptations to buildings, additional teaching materials amongst others.

Specialist training of teachers is a must since when teachers are ill-equipped to meet the needs of students with disabilities, this often leads to students being even more isolated and a feeling of frustration for both teachers and the students. Hence, training is important because each child with disabilities is different and thus, teachers need to know and understand how best each can learn. Moreover, not only educators but school administrators and ministry officials as well require training to respond to diversity. In an interview on 21<sup>st</sup> December 2018, Mr Armoogum Parsuramen, a former minister of education stated that ‘Pupils with support needs are to receive support measures, and pupils who are blind, deaf and deaf-blind are to receive their education in the most appropriate modes of communication from teachers who are fluent in sign language and Braille’<sup>87</sup>. This, in turn, implies adopting new teaching practices which foster cooperative learning and peer tutoring; recognizing different learning styles which call for differentiated instruction; fostering a respect for diversity and a culture of inclusion, and encouraging collaborative approaches among teachers<sup>88</sup>. Teaching conditions should subsequently be addressed so that teachers are well and reliably paid and are given time for professional development and training.

Since its signature in 2013, it is high time for Mauritius to ratify the Marrakesh Treaty since a situation of ‘book famine’ prevails in the country due to the fact that there are very few published texts available in accessible format like Braille tailored for use by people with visual impairments. There are several benefits of adherence to the treaty like improving the education and life-chances of many of their citizens, implementing principles of international human rights law, enhancing social integration and cultural participation as well as stimulating economic and social development. Besides, being a treaty that emphasises on discussion and awareness on the importance of having policies for persons with disabilities, State parties to the Marrakesh Treaty can benefit from access to a wide range of works for persons with other types of disabilities other than visual impairment. The implementation of the treaty could also trigger actions to implement additional provisions of the UNCRPD for the benefits of the wider community of persons with disabilities.

Investment and collaboration of the government and all concerned stakeholders is one amongst the main solutions to meet the challenges faced in ensuring that all students with disabilities have access to school through full and meaningful participation. NGOs, children with disabilities themselves along with their parents should be actively engaged in policy development and implementation. In addition, a change in the mindset of the community at large should be fostered, especially, regarding the inclusion of children with disabilities in mainstream schools along with the other children.

Training should also be provided to parents of children with disabilities to ease communication between parents and their children as well as support and encourage them in upbringing their children and ensuring that the latter have access to quality education. Inclusive education is recommended for Mauritius since it is economically effective and efficient because rather than taking resources out of the regular system to educate groups of students with specific needs, all of the resources stay in the system.

This has been stated by the UN CRPD Committee that “no country can afford a dual system of regular and segregated education delivery”<sup>89</sup>. Hence, for better utilisation of its scarce resources, Mauritius should opt for an inclusive education which has several benefits to both children with disabilities and without disabilities. It has been reported that student with disabilities who have been included in mainstream schools are healthier, perform better, are keener to go to school and are more likely to be socially integrated afterwards as

compared to their fellow friends who have not been included<sup>90</sup>. Similarly, research provides that everyone benefits when teachers are given specialist training.

## **6. CONCLUSION**

It is undeniable that education plays an essential role and has an immeasurable impact on a person's life. Through education, one can effectively break the cycle of discrimination and poverty that children with disabilities often face. Besides, when children with disabilities are denied their right to education, this subsequently leads to a chain of lifelong impacts ranging from learning, achievement to employment opportunities which will consequently prevent them in their potential economic, social and human development. It should also be reiterated that these children with disabilities are part of our 1.3 million inhabitants. By excluding them, Mauritius is losing some rare and valuable human resources that could have contributed a lot in the economic development of the island. It is worth mentioning the names of those children with disabilities like Jane Constance<sup>91</sup> who by way of their inherent talents are making Mauritius renowned worldwide. Hence, this indicates that even in Mauritius, the policies that reflect the principles of CRPD remain mainly on paper and that the gaps amongst access, participation and learning of children with disabilities are not as such addressed.



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<sup>46</sup> Education Statistics 2017 available at [http://statsmauritius.govmu.org/English/Publications/Pages/Edu\\_Stats\\_Yr2017.aspx](http://statsmauritius.govmu.org/English/Publications/Pages/Edu_Stats_Yr2017.aspx) (accessed 2018-1-14).

<sup>47</sup> Article 26 of the Universal Declaration of Human Rights (UDHR) of 1948.

<sup>48</sup> Article 1 of the Universal Declaration of Human Rights (UDHR) of 1948.

<sup>49</sup> Article 38(1)(b) of the Statute of the International Court of Justice of 1945.

<sup>50</sup> Article 13 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) of 1966.

<sup>51</sup> Article 2(1) of the International Covenant on Economic, Social and Cultural Rights (ICESCR) of 1966.

<sup>52</sup> Article 2(3) of the International Covenant on Economic, Social and Cultural Rights (ICESCR) of 1966.

<sup>53</sup> Article 2.1 (g) of the Vienna Convention on succession of States in respect of treaties of 1978.

<sup>54</sup> *Western Cape Forums for Intellectual Disability v The Government of the Republic of South Africa.* & *Government of the Province of Western Cape* 18678/2007.

<sup>55</sup> *Western Cape Forums for Intellectual Disability v The Government of the Republic of South Africa.* & *Government of the Province of Western Cape.*

<sup>56</sup> Republic of Mauritius 2012 “Implementation of the UN Convention on the Rights of Persons with Disabilities- Initial report submitted by States parties under Article 35 of the Covenant”.

<sup>57</sup> *Stoian v Romania* (Application. 289/14).

<sup>58</sup> United Nations 1993 “Standard Rules on the Equalisation of Opportunities for Persons with Disabilities” available at <https://www.un.org/development/desa/disabilities/standard-rules-on-the-equalization-of-opportunities-for-persons-with-disabilities.html> (accessed 2019-12-2).

<sup>59</sup> WIPO “Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired or otherwise Print Disabled” available at <https://www.wipo.int/treaties/en/ip/marrakesh/> (accessed 2019-12-2).

<sup>60</sup> UN “History of United Nations and Persons with Disabilities – The decade of the nineties” available at <https://www.un.org/development/desa/disabilities/history-of-united-nations-and-persons-with-disabilities-the-decade-of-the-nineties.html> (accessed 2020-02-17).

<sup>61</sup> Paust J 2013 “Basic forms of International Law and Monist, Dualist, and Realist Perspectives” available at [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2293188](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2293188) (accessed 2019-12-2).

<sup>62</sup> *Matadeen v Pointu* (1998) UKPC 9.

<sup>63</sup> *Ex Parte Hurnam Devendranath, a Barrister-at-Law* (2007) SCJ 289.

<sup>64</sup> *Ex Parte Hurnam Devendranath* Supra.

<sup>65</sup> Dixon M Textbook on International Law (2000) 84.

<sup>66</sup> *Société United Docks v. Government of Mauritius* (1981) MR 500.

<sup>67</sup> *Société United Docks v. Government of Mauritius* Supra.

<sup>68</sup> S 16(3) of the Constitution of the Republic of Mauritius, 1968.

<sup>69</sup> The Education Act 39 of 1957.

<sup>70</sup> *Matadeen v Pointu* Supra.

<sup>71</sup> S 33 of The Equal Opportunities Act 42 of 2008.

<sup>72</sup> S 3 of The Ombudsperson for Children Act 41 of 2003.

<sup>73</sup> S 3 of The Ombudsperson for Children Act 41 of 2003.

<sup>74</sup> S 6(b) of The Ombudsperson for Children Act 41 of 2003.

<sup>75</sup> S 6 of the Ombudsperson for Children Act 41 of 2003.

<sup>76</sup> S 6(f) of The Ombudsperson for Children Act 41 of 2003.

<sup>77</sup> Government of Mauritius 2017 “Ombudsperson for Children- Annual Report” (2016-2017).

<sup>78</sup> Government of Mauritius 2016 “Ombudsperson for Children-Annual Report” (2015-2016).

<sup>79</sup> Government of Mauritius “Government committed to amend Constitution to remove discrimination on the basis of disability, says Minister” available at <http://www.govmu.org/English/News/Pages/Government-committed-to-amend-Constitution-to-remove-discrimination-on-the-basis-of-disability,-says-Minister.aspx> (accessed 2020-02-17).

<sup>80</sup> Government of Mauritius 2019 “Disability Bill will be soon presented at the National Assembly, says the Attorney General” available at <http://www.govmu.org/English/News/Pages/Disability-Bill-will-be-soon-presented-at-the-National-Assembly-says-the-Attorney-General> (accessed 2019-12-4).

<sup>81</sup> Top TV Mauritius 2019 “‘I started reading the Disability Bill’ says Fazila Jeewa-Daureeawoo” available at <https://www.youtube.com/watch?feature=youtu.be&v=bxrZHurkBKk&app=desktop> (accessed 2019-12-4).

<sup>82</sup> Defimedia Newspaper (2016-02-29).

<sup>83</sup> *Thandrayen K & Anor v The State Of Mauritius & 2 Ors* (2010) SCJ 358.

<sup>84</sup> Le Mauricien Newspaper (2018-01-21).

<sup>85</sup> MES 2017 “Annual Programme for the Primary School Achievement Certificate (PSAC) Assessment For 2017”.

<sup>86</sup> Anderson E “The Disabled Schoolchild: A study of integration in primary schools” (1973) 302-303.

<sup>87</sup> L’Express Newspaper (2018-12-21).

<sup>88</sup> Timothy J. Landrum & Kimberly A. McDuffie 2010 “Learning Styles in the Age of Differentiated Instruction” available at <https://www.tandfonline.com/doi/pdf/10.1080/09362830903462441> (accessed 2019-12-4).

<sup>89</sup> Inclusion International 2019 “Is inclusive education more expensive than segregation?” available at <https://inclusion-international.org/catalyst-for-inclusive-education/faq/> (accessed 2019-12-4).

<sup>90</sup> UK Essays 2017 “Should All Children be Included in Mainstream Schools?” available at <https://www.ukessays.com/essays/education/every-child-should-be-included-in-mainstream-classrooms-education-essay.php> (accessed 2019-12-4).

<sup>91</sup> UNESCO 2017 “Young Mauritian singer Jane Constance named UNESCO Artist for Peace” available at <https://en.unesco.org/news/young-mauritian-singer-jane-constance-named-unesco-artist-peace> (accessed 2019-12-4).

Jane Constance is a Mauritian, born on 16 September 2010. She is blind since birth; despite her disability she had a great passion for music. She has won the French television competition entitled The Voice Kids in 2015. Moreover, she has been named as the UNESCO Artist for Peace in 2017, due to her commitment towards the promotion of rights of persons with disabilities.