

REAL OR A FAÇADE? A REVIEW OF LAWS PROTECTING THE EDUCATIONAL RIGHTS
OF PERSONS WITH DISABILITIES IN GHANA

by

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Dalhousie University is located in Mi'kma'ki, the ancestral and unceded territory of the Mi'kmaq. We are all Treaty people.

We recognize that African Nova Scotians are a distinct people whose histories, legacies and contributions have enriched that part of Mi'kma'ki known as Nova Scotia for over 400 years.

Dedication

I dedicate this paper to my brother (Gilbert Boah), who has a disability and serves as my inspiration for choosing this topic. I also want to extend my heartfelt gratitude to my mom, who has been my support system and source of comfort as I navigated the ‘tides’ of graduate school. Lastly, I would like to thank my family and friends for their encouragement, guidance, and prayers.

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Abstract

The exclusion of a significant number of students with disabilities from quality education in Ghana raises a crucial question: does Ghana have adequate laws or policies to guarantee persons with disabilities (PWDs) rights, particularly equitable access to education? Beyond this is the further question of whether Ghana has effectively implemented its laws and policies on inclusive education. This paper undertakes a comprehensive review and critical analysis of Ghana's laws and policies safeguarding the educational rights of students with disabilities, an issue of immediate and pressing concern. It asks: should Ghana's laws and policies be reformed in order to better promote inclusive education? And if so, what reforms are required? The method adopted involves comparing Ghana's legislative and policy frameworks on inclusive education with international instruments and the legal frameworks of another jurisdiction. Given its global recognition as a leader in this area, I chose New Brunswick, Canada, for comparative analysis. New Brunswick has done important work in this area, which holds promise for reforming the policies of other jurisdictions like Ghana. The main finding of this paper is that Ghana continues to base its education laws and policies on a segregation model that affects the right to education for students with disabilities. On the other hand, New Brunswick has laws and policies in place, along with effective implementation and regular monitoring of its progress toward achieving inclusive education for students with disabilities. This research uncovers a major loophole in the laws protecting the education rights of students with disabilities in Ghana. Furthermore, the comparative study between Ghana and New Brunswick provides very important insights and recommendations, which, if adopted by the Ghanaian legal system, will ensure a path to more inclusive education in Ghana.

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CHAPTER 1 GENERAL INTRODUCTION

1.0 Introduction

This thesis undertakes a comprehensive review and critical analysis of Ghana’s legislation and policies safeguarding the educational rights of persons with disabilities, an issue of immediate and pressing concern.¹ It asks: should Ghana’s laws and policies be reformed in order to better promote inclusive education? And if so, what reforms are required? The method adopted involves comparing Ghana’s legislative and policy frameworks on inclusive education with international instruments and the legal frameworks of another jurisdiction. Given its global recognition as a leader in this area,² I chose New Brunswick, Canada, for comparative analysis. The comparable jurisdiction has done important work in this area, which holds promise for reforming the policies of other jurisdictions like Ghana – although, recent reports suggest New Brunswick has its own continuing challenges. This research has the potential to significantly influence the direction of inclusive education policies in Ghana and beyond. In this section, I explain the purpose and methods of my study.

The exclusion of a significant number of persons with disabilities from quality education in Ghana raises a crucial question: does Ghana have adequate laws or policies to guarantee persons with disabilities rights, particularly equitable access to education? Beyond this is the further question (also explored in this thesis) of whether Ghana has effectively implemented its laws and

¹ There are differences of opinion among disability advocacy organizations as to whether person-first or identity-first language is more politically appropriate. I have chosen to use the term “persons with disabilities” in my research to refer to individuals or students with disabilities. This is in line with the Canadian federal guidelines set by the Canadian Accessibility Network, which recommends person-first language. However, I recognize that language use should be shaped by identity group preference wherever possible. See Canadian Accessibility Network, *CAN Language Guide* (Canada: Canadian Accessibility Network, 2023); Andrews Erin E., “Disability Models” in Maggi A. Budd et al. (eds) *Practical Psychology in Medical Rehabilitation* (Switzerland: Springer Intl Publishing, 2017) at 79.

² A Wayne MacKay, “Inclusion!: What is Inclusion Anyway? Questions and Answers About the MacKay Report on Inclusion,” (2007). 1 at 3. Available online: <https://www2.gnb.ca/content/dam/gnb/Departments/ed/pdf/K12/mackay/InclusionQuestionsAndAnswersAboutReportOnInclusiveEducation.pdf>.

policies. Notably, Ghana enacted legislation for the protection of persons with disabilities, known as the *Persons with Disabilities Act of Ghana (Act 715)*,³ in 2006, predating the United Nations *Convention on the Rights of Persons with Disabilities*.⁴ The focus of inclusive education advocacy in Ghana is whether the laws as written are up to the CRPD standards and whether CRPD rights are being fulfilled in practice.

In short, this thesis focuses on the human rights adequacy of the laws and policies on inclusive education in Ghana. It considers the content and implementation of these laws and policies specifically with regard to facilitating inclusive education. This involves inquiry into whether structural and systemic barriers in and beyond the legislation itself limit people's access to inclusive education. It asks whether the laws on inclusion in Ghana align with the terms of the CRPD on inclusive education, as well as whether the laws meet international standards on inclusive education observed in other jurisdictions such as Canada – focusing in particular on the last few decades of law and policy, including recent legislative reforms, in New Brunswick. This approach ensures an in-depth evaluation of laws and policies in Ghana in relation to inclusive education, with findings that can potentially shape the future of inclusive education in Ghana.

In examining the adequacy of the laws in relation to inclusive education, this thesis delves into the theoretical foundations that underlie the policy and politics informing the laws. The literature on the rights of persons with disabilities confirms that the government's perception and adoption of one or another conceptual model of disability shapes its policy and interventions. Engagement with those theoretical foundations serves as a tool for criticism as well as an instrument for providing constructive proposals for Ghana's legislative framework. This work

³ Persons with Disabilities Act of Ghana, 2006 (Act 715). [Act 715].

⁴ *United Nations Convention on the Rights of Persons with Disability*, 30 March 2007, A/RES/61/106, (entered into force 3 May 2008) [CRPD]

leverages three interrelated theories of disability, explaining how they have historically informed the contours of local and international instruments. While I discuss these theoretical foundations in detail later in this chapter, it is important to briefly outline how these theories inform proposed solutions for persons with disabilities in evaluating the laws on inclusive education's adequacy.

The concept of disability is underpinned by three main theories: medical, social, and critical. Each theory is a response to the others. The medical model of disability conceives of disability as a medical impairment or, relatedly, individualized functional limitation.⁵ Social theory challenges the medical definition of disability by reframing the concept to reflect the ways society objectively disables people. Critical disability theory goes further by examining power imbalances and oppressive tendencies that affect the daily experiences and even subjectivities or self-understandings of persons with disabilities.

In practical terms, the medical model of disability privileges medical knowledge in conceptualizing disability, thereby creating a significant role for medical experts in determining if someone is disabled. In contrast, the "social model" and related "human rights model" of disability view disability as a construct influenced by power and context.⁶ The social theory represents historical, political and social movements that challenge the medical narratives and conceptualization of disability. This social constructionist view examines how society perceives and interacts with people with disabilities. It views disability as a societal phenomenon and a public concern requiring government involvement (within a framework of human rights) to eliminate obstacles and offer social solutions. Lastly, critical disability theory advances the social model by

⁵ Maria Berghs et al., "Implications for Public Health Research of Models and Theories of Disability: A Scoping Study and Evidence Synthesis" (2016) 4:8 Public Health Res.

⁶ Richard Devlin & Dianne Pothier, "Introduction: Toward a Critical Theory of Dis-Citizenship" in Dianne Pothier & Richard Devlin, eds, *Critical Disability Theory: Essays in Philosophy, Politics, Policy and Law* (Vancouver: UBC Press, 2006) at 2.

conceptualizing disability more thoroughly through the lens of power and oppression, challenging even some of the core concepts of the social model (like “impairment”).⁷ Leveraging these theoretical underpinnings, this thesis will assess Ghana’s foundational assumptions or governing model of disability in addressing the protection of persons with disabilities in relation to education and whether these foundations restrict or enhance the rights and interests of persons with disabilities.

1.1 Persons with Disabilities Concerns Are Relatable: A Personal Experience

Why this topic? Do you have a disability? Why are you interested in disability rights? Do you think the government of Ghana will be interested in your topic? These are some of the questions I ask myself and questions I am asked when discussing my research topic with others. My experience with the exclusion of persons with disabilities in Ghana informs my interest in undertaking a comprehensive study about Ghana’s laws and policies affecting persons with disabilities, specifically focused on education. My experience also reflects and affirms the alarming reports examined further herein about the significant number of persons with disabilities excluded from enjoying the full benefits of citizenship (including education), which Professors Richard Devlin and Dianne Pothier describe as dis-citizenship.⁸ While the evidence of exclusion is scary, I strongly believe that my research will help facilitate discussions and awaken consciousness to help eventually trigger substantial reforms in persons with disabilities inclusion in education in Ghana. The following passage from my methodological prospectus (written as part

⁷ Critical Disability Theory (CDT) is an advanced social model of disability that extends beyond society categorizing certain individuals and restricting their access to certain rights. CDT focuses on who holds power as well as the limitations on the enjoyment of human rights that are available to society but restricted for others due to systematic barriers or inequities.

⁸ Devlin & Pothier, *supra* note 6 at 1-2.

of the graduate program in law) describes a small part of my personal connection to my thesis topic:

Approximately two decades ago, my family embarked on a journey to enroll my younger brother, who had a speech disorder, in our community school. At the time, my elder sister and I were attending the community school in question, and my mother wanted my brother to be in the same school so that we could keep an eye on him. However, despite our mother's efforts, the school's head determined that my brother was unsuitable for enrollment. He felt that my brother's speech disorder would disrupt the learning of other students and hinder their progress. As a result, he advised my mother to find a special in-home teacher for him.

The news was a significant blow to us, as we had always dreamt of attending school together. This experience motivated me to advocate for people with disabilities and is part of what led me to pursue a career in law and advocacy. When it was time to choose a research topic for my master's degree, I decided to focus on the laws and policies that protect the educational rights of people with disabilities in Ghana. Through my research, I hope to identify ways to enhance the educational experiences of people with disabilities in Ghana and promote inclusivity in the country.⁹

1.2 Research Methodology: Methods and Theory

1.2.1 Research Methods

This paper employs a mix of three research methodologies to explore the subject matter: doctrinal, comparative, and legal-theoretical (with a focus on critical disability theory). Individually, each method examines separate components of the thesis, and collectively, they provide strategies to engage with the work and recommend reforms. I discuss each of these methodologies below.

A. Doctrinal Research Methodology

It is crucial to critically engage with legislation as it formally authorizes institutional actors and action and provides a foundation for reforms or amendments in alignment with social demands

⁹ Linda Boah, "Real or Mere Facade? A Review of the Laws Protecting the Educational Rights of Persons with Disabilities in Ghana" (2024) at 7-8 (adopted from my Methodological Prospectus, submitted as a requirement for the Graduate Seminar at Schulich School of Law).

and needs.¹⁰ The doctrinal methodology provides a valuable toolkit for critical engagement with legal instruments, case law, policy papers, and official reports related to persons with disabilities in Ghana and Canada (New Brunswick). It includes the methodology of statutory interpretation, i.e., examining the text and spirit of legislation, a vital step toward then assessing its effectiveness.¹¹ This methodology helps to identify gaps and inconsistencies in these legal and policy frameworks and provides the basis for recommendations.¹² I employ statutory interpretation and related legal analysis, as well as analysis based on anti-discrimination law (drawing on Canadian constitutional and statutory human rights law) as a frame of analysis. These analyses are supplemented in my work by analysis of policy papers and official reports on whether or how the law on the books is informing practice.

The doctrinal analysis will be conducted in three ways. The first involves describing and analyzing key elements of international instruments like the CRPD. Second, I will use this methodology (and related methodologies exploring whether the law on the books is affecting practice) to explore the legal regimes relevant to inclusive education for persons with disabilities in Ghana. This involves examining the *Constitution of the Republic of Ghana, 1992*¹³ and Act 715. It is essential to consider the Ghanaian constitution to determine if there is any constitutional guarantee of relevance to inclusive education. As the constitution holds supremacy, identifying a constitutional guarantee, or lack thereof, for persons with disabilities right to inclusive education, has far-reaching implications for their demands for a fair and equitable framework. In addition to the CRPD, constitutional analysis is crucial in assessing the legitimacy and validity of Act 715, as

¹⁰ *Ibid.*

¹¹ Doctrinal legal analysis may be defined as “a critical conceptual analysis of all relevant legislation and case law to reveal a statement of the law relevant to the matter under investigation.” See T. Hutchinson & Valé Bunny Watson, “Law Librarians, Law Libraries and Legal Research in the Post-Internet Era” (2014) 106:4 L Library J. 579 at 584.

¹² Boah, *supra* note 9.

¹³ The Constitution of the Republic of Ghana, 1992 [The 1992 Constitution].

all laws in Ghana derive their legitimacy from it. In this second application of the doctrinal method, I will also delve into the central legislation on the rights of persons with disabilities in Ghana – Act 715. Furthermore, using doctrinal methodology, I aim to assess the consistency or inconsistency of the law with the CRPD as part of a wider assessment of Ghana’s compliance with its commitment to inclusive education through the CRPD’s implementation. As a signatory to the CRPD, Ghana has a legal obligation to implement the international instrument.¹⁴

A third way I will use doctrinal methodology is by exploring the legal landscape for protecting persons with disabilities in New Brunswick, Canada. This will involve examining Canada’s *Charter*¹⁵ for similar reasons as I explore Ghana’s 1992 Constitution.¹⁶ The Charter is a part of Canada’s constitution and contains important provisions (specifically, an anti-discrimination provision) for the protection of the rights of persons with disabilities.¹⁷ As a result, the Charter has produced a line of case law relevant to inclusive education. Additionally, I will review the New Brunswick *Human Rights Act*¹⁸ and the New Brunswick *Education Act*¹⁹ -- two key statutes informing that province’s inclusive education efforts over the past three decades. I will also review official reports and related jurisprudence under each of these pieces of key legislation. I will also

¹⁴ Article 75 of the 1992 Constitution states, “(1) The President may execute or cause to be executed treaties, agreements or conventions in the name of Ghana. (2) A treaty, agreement or convention executed by or under the authority of the President shall be subject to ratification by (a) Act of Parliament; or (b) a resolution of Parliament supported by the votes of more than one-half of all the members of Parliament.” Ghana is a dualist state. Thus, after signing an international document, its parliament has to ratify the law and incorporate it into its domestic laws through the appropriate legislation. The court stated, however, that a ratified treaty by parliament must not be inconsistent with domestic laws or otherwise alter the rights and obligations therein unless it has legislative backing. See *The Republic vrs. High Court (Comm. Div.), Accra; Ex. Parte: Attorney General and others* [2013] (June 2013), at 2-4. Online: <https://www.studocu.com/row/document/ghana-institute-of-management-and-public-administration/law/republic-v-high-court-com-div-accranml-ex-parte-attorney-general/16278341>.

¹⁵ Canadian Charter of Rights and Freedoms, s 2(b), Part I of the Constitution Act, 1982, being Schedule B to the Canada Act 1982 (UK), 1982, c 11 [Charter].

¹⁶ The 1992 Constitution, *supra* note 13.

¹⁷ United Nations, “General Comment No. 4 on Article 24 - The Right to Inclusive Education.” (2016). Accessed online at <https://www.refworld.org/legal/general/crpd/2016/en/112080>. [General Comment No. 4].

¹⁸ Human Rights Act, RSNB 2011, c. 171. [Human Rights Act].

¹⁹ Education Act, SNB 1997, c E-1.12. [Education Act].

look into New Brunswick’s *Accessibility Act*,²⁰ which was recently enacted in 2024 and which promises to be an important part of New Brunswick’s comprehensive framework for protecting the rights of persons with disabilities.

B. Comparative Research Method

As earlier noted, this thesis examines the adequacy of Ghana’s laws and policies relating to inclusive education by examining whether these comply with international standards and comparator regimes in other jurisdictions. It does this by comparing Ghana’s Act 715 with the rights protections for persons with disabilities in Canada, focusing primarily on New Brunswick, which as noted has been acknowledged as a leader in inclusive education in that country and beyond. The comparison is intended to draw lessons from Canada and consider the adaptability of those lessons to the unique legal, social and cultural context of Ghana. As Robert Cryer and his colleagues state, the comparative method aids in analyzing and potentially harmonizing laws to test whether a particular law or legal regime works across different legal systems.²¹ Comparative research contributes to the unification and globalization of legal systems on a smaller or larger scale.²² It also helps distinguish between different legal orders and situations in which harmonization is neither possible nor desirable.²³

Canada was selected as my comparator country because of its innovative laws, policies, and approaches to inclusive education. Canada is one of the most developed countries in the world known for its commitment to human rights, most notably rights on disability inclusivity.²⁴ The country has a comprehensive human rights framework which has played an important role in

²⁰ Accessibility Act of New Brunswick, 2024, c. 27. Assented to June 7, 2024. [Accessibility Act].

²¹ Robert Cryer et al., *Research Methodologies in EU and International Law* (Oxford: Hart Publishing, 2011) at 28.

²² *Ibid.*

²³ *Ibid.*

²⁴ Michael J Prince, “Canadian Disability Policy: Still a Hit-and-Miss Affair.” (2004) 29:1 *Can J Sociology* / 59–82. Available at <https://doi.org/10.2307/3341945>.

promoting inclusive education. The study will be limited to New Brunswick, a small province in Canada that is recognized as a leader in this field, especially for persons with disabilities.²⁵

In Canada, responsibility for education, and more specifically for protecting the educational rights of persons with disabilities, lies primarily with the provinces rather than the federal government.²⁶ However, the *Charter*, which applies to federal, provincial, and territorial governments, includes a non-discrimination guarantee (section 15) which protects the rights of persons with disabilities to social inclusion.²⁷ Further, the federal government and all provinces and territories in Canada each have a dedicated *Human Rights Act*.²⁸ Education laws are, as noted, provincial and not federal; every province has put in place laws, policies, programs, curricula, and practices to cater to the learning needs of its residents.²⁹ Last, the *Accessible Canada Act*³⁰ speaks to accessibility on matters within federal jurisdiction – which does not include education³¹ – while Nova Scotia, New Brunswick, Manitoba, and Ontario have their own accessibility acts (which apply to education), each with distinct characteristics. In contrast, Ghana follows a unitary system where the central government makes laws for the entire country.³²

²⁵ MacKay, *supra* note 2 at 3.

²⁶ The Constitution Act, 1982, Schedule B to the Canada Act 1982 (UK), 1982, c 11 at s 93. [Constitution Act].

²⁷ The Charter, *supra* note 15 at s 15.

²⁸ Canadian Centre for Diversity and Inclusion, “Overview of Human Rights Codes by Province and Territory in Canada” (2018). Online: <https://ccdi.ca/media/1414/20171102-publications-overview-of-hr-codes-by-province-final-en.pdf>.

²⁹ Council of Ministers of Education, Canada. “Over 50 years of Pan-Canadian Leadership in Education.” Online: https://www.cmec.ca/680/ElementarySecondary_Education.html#:~:text=Each%20province%20and%20territory%20has,learning%20needs%20of%20its%20population.

³⁰ Accessible Canada Act (S.C. 2019, c.81. Assented to on June 21, 2019. Last amended on 2023-04-27. [Accessible Canada].

³¹ Lisa Kovac, “Accessibility Standards Across Canada” (2021). Online: <https://www.aoda.ca/accessibilitystandardsacrosscanada/#:~:text=Ontario%2C%20Manitoba%2C%20and%20Nova%20Scotia,to%20organizations%20under%20federal%20jurisdiction.>

³² Parliament of Ghana, “Mandate of Parliament.” Online: <https://www.parliament.gh/mandate>.

Following her visit to Canada in 2019, Catalina Devandas-Aguilar, the former UN Special Rapporteur on Disability,³³ acknowledged New Brunswick’s exemplary inclusive education regime. She noted New Brunswick’s application of universal design for learning (UDL) principles, providing unique support for each child with disabilities to participate in regular schools alongside other children.³⁴ She indicated that the province’s education system was one of the best systems in the world, setting an example for others.³⁵ It is in some ways remarkable that such a small province has earned international recognition for doing so well to initiate policies and make laws to promote inclusive education of persons with disabilities. This is why this thesis adopts a comparative methodology to learn from New Brunswick’s legal framework in order to potentially enhance Ghana’s legal system to meet international standards. Other reasons for limiting my comparative study to New Brunswick are that both Ghana and New Brunswick are relatively small democratic polities which follow the common law.

In sum, this thesis will use the adoption and implementation of laws and policies on inclusive education in New Brunswick affecting persons with disabilities as a reference point against which to compare Ghana’s adoption and implementation of education laws and policies affecting persons with disabilities. Most specifically, I will be comparing how Ghana’s Act 715 and New Brunswick’s laws and policies conceptualize disability, viewed in light of the medical, social and critical model – and what this means for the advancement of disability rights. Finally, to determine whether Ghana’s legal framework and New Brunswick’s legal framework comply with the CRPD, I will analyze Ghana’s Act 715,³⁶ in light of

³³ This is noted earlier in my prospectus. Catalina Devandas-Aguilar served as the United Nations Special Rapporteur on the Rights of Persons with Disabilities from 2014 until 2020.

³⁴ United Nations Office of the High Commissioner, “End of Mission Statement by the United Nations Special Rapporteur on the Rights of Persons with Disabilities on Her Visit to Canada.” (2019). Online: <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=24481&LangID=E>.

³⁵ *Ibid.*

³⁶ Act 715, *supra* note 3.

New Brunswick's *Education Act*,³⁷ *Human Rights Act*³⁸, *Accessibility Act*,³⁹ and policies on persons with disabilities to explain how both jurisdictions have advanced inclusive education policies and where there is room for improvement.

C. Legal Theory

As noted above, my thesis will focus on the laws and policies on inclusive education in Ghana and New Brunswick, Canada and how they function within these jurisdictions. The understandings of disability underpinning these and other legal regimes draw upon one or more of the following theoretical models of disability: the medical, social and critical models. I discuss these models more fully below and explain why the critical theory of disability guides my analysis in this thesis.

i. Medical Model

The medical model views disability as a consequence of a health condition, disease, or accident that disrupts function. The goal of the medical theory of disability is to enhance diagnosis and treatment to enable persons with disabilities to become 'normal'. This model is not concerned with changes in society. It regards disability as an individual problem rather than a societal one.⁴⁰ In short, the medical model conceives disability as a personal defect within an individual, making it the individual's sole responsibility to adjust themselves (potentially with the aid of medical intervention) to fit into society.⁴¹ This model disregards or downplays societal barriers and attitudes contributing to disability discrimination, focusing solely or primarily on medical diagnoses, treatments, and interventions to correct a disability.⁴²

³⁷ Education Act, *supra* note 19.

³⁸ Human Rights Act, *supra* note 18.

³⁹ Accessibility Act, *supra* note 20.

⁴⁰ Simo Vehmas, "Ethical Analysis of the Concept of Disability." (2004) 42:3 Mental Retardation 209-222.

⁴¹ Holmes, O.W., "The Best Thing for Being Sad is to Learn Something" (1861) 7:44 Atlantic Monthly 566-582.

⁴² Michael Oliver, *The Politics of Disablement* (London: Macmillan Education, 2011).

ii. Social Model/ Social Constructionist Theory

The social model of disability views disability from a different perspective than the medical model. It interprets disability as a construct imposed by external powers, including law, medicine, and governmental systems and institutions, to name a few.⁴³ The social model sees disability as “the attitudinal, physical, systemic, communication, and technological barriers created by society.”⁴⁴ This does not mean it does not acknowledge impairment as a disability, but rather, it seeks to put responsibility on society to accommodate persons with disabilities.⁴⁵

According to the social model, the term “disability” is misunderstood when it is used interchangeably with impairment or health conditions.⁴⁶ Some people assume that all persons with disabilities are sick or perhaps have poor health. However, rather than illness or impairment, disability refers (on the social model) to “the experiences of meeting barriers or facing exclusion as a result of living with certain bodies or bodily differences.”⁴⁷

Further, according to social constructionism, our world perspectives are shaped by other people rather than unmediated truth.⁴⁸ According to members of the United Kingdom (UK) movement, the Union of the Physically Impaired Against Segregation (UPIAS), “disability is something imposed on top of our impairments by the way we are unnecessarily isolated and excluded from full participation in society.”⁴⁹ People are born into a world where culturally prevalent conceptual frameworks and categories already exist.⁵⁰ Thus, a person’s social and

⁴³ Geoffrey Reaume, “Understanding Critical Disability Studies” (2014) 133:196 CMAJ. 1248 - 1249. <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4216267/>.

⁴⁴ EPIC Assist, “The Biggest Barrier for People with Disability is How Society Disables Them” (2021). Online: <https://epicassist.org/the-biggest-barrier-for-people-with-disability/>. [EPIC Assist].

⁴⁵ *Ibid.*

⁴⁶ Deborah Stienstra, *About Canada: Disability Rights*, 2nd ed (NS; Fernwood Publishing, 2020) at 4.

⁴⁷ *Ibid.*

⁴⁸ Vivien Burr, *Social Constructionism*. 3rd ed (London, Routledge, 2015). Available online: <https://doi.org/10.4324/9781315715421>.

⁴⁹ Sheila Wildeman, “Protecting Rights and Building Capacities: Challenges to Global Mental Health Policy in Light of the Convention on the Rights of Persons with Disabilities” (2013) 41:1 JL Medicine & Ethics. 52.

⁵⁰ *Ibid.*

physical surroundings, not their personal characteristics, determine their level of disability.⁵¹ Some descriptors used in society, like “crippled” or “retarded”, harm people living with disability and make them feel less of themselves.⁵²

The aim of the social model is to help persons with disabilities take action against discrimination and to empower people to find solutions, remove barriers, and campaign together for equality and human rights.⁵³ In this way, there is a deep connection between what is called the social model and the “human rights model” of disability.⁵⁴ People with different impairments face many of the same challenges and barriers – as well as challenges and barriers that are distinct. Some of these include prejudiced opinions and attitudes, restricted access, and systematically excluded people.⁵⁵ Both the social and human rights models look at how society can be planned and organized to provide accessibility, independence, and opportunity in a way that enables people rather than disables them.⁵⁶

In sum, on this model or both the closely connected social and human rights models—disability is a social construct created by barriers, barriers that can be eliminated.⁵⁷ People will not be disabled if the necessary resources are provided to aid them in their daily activities.⁵⁸ Everyone,

⁵¹ Justin Healey, *People with Disability* (Thirroul, New South Wales: The Spinney Press, 2017). Available at <https://search.ebscohost.com/login.aspx?direct=true&db=e000xna&AN=1555914&site=ehost-live>.

⁵² Franck Kuwonu, “The Biggest Challenge Is Ableism, Not My Disability” (August 2021) *Africa Renewal*. Online: <https://www.un.org/africarenewal/magazine/august-2021/%E2%80%98biggest-challenge-ableism-not-my-disability%E2%80%99>.

⁵³ Anna Lawson & Angharad Beckett, “The Social and Human Rights Models of Disability: Towards a Complementarity Thesis” (2020) 25:2 *Intl J Human Rights* 348–379. Available online: <https://doi.org/10.1080/13642987.2020.1783533>.

⁵⁴ *Ibid.*

⁵⁵ *Ibid.*

⁵⁶ United Nations Human Rights, *The Convention on the Rights of Persons with Disabilities: Training Guide, Professional Training Series No. 19* (NY & Geneva: UN, 2014).

⁵⁷ Dimitris Anastasiou & James Kauffman, *A Social Constructionist Approach to Disability: Implications for Special Education*, (London and Wales: Routledge, 2017) at 7.

⁵⁸ *Ibid.*

including the government, schools, workplaces, and individuals, is responsible for making changes to increase access and build a more equal society where everyone can reach their full potential.

iii. Critical Disability Theory

Critical disability theory (CDT) may be viewed as a theory of disability viewed through the lens of power. CDT is “a diverse, interdisciplinary set of theoretical approaches.”⁵⁹ Its objective is to analyze disability as a cultural, historical, social, and political phenomenon.⁶⁰ As yet, this is similar to the social and human rights models. The main difference relates to the theorizing of “impairments”. Schalk argues that as a methodology, CDT “involves scrutinizing not bodily or mental impairments but the social norms that define particular attributes as impairments and the social conditions that concentrate stigmatized attributes in particular populations.”⁶¹ Going further than the social model, the theory offers further insights into how society can better support persons with disabilities by identifying and addressing the root causes of oppression.⁶²

Dianne Pothier and Richard Devlin argue that CDT is built on the argument that “disability is not fundamentally a question of medicine or health, nor is it solely an issue of sensitivity and compassion.”⁶³ Instead, they claim it is a matter of “politics and power(lessness), power over, and power to.”⁶⁴ CDT seeks to promote a more equitable and just society by shedding light on the relationship between disability, power, inequality, and social justice. This model challenges the

⁵⁹ Melinda Hall, *Critical Disability Theory*, (The Stanford Encyclopedia of Philosophy, 2019) at 3. Available online: <https://plato.stanford.edu/archives/win2019/entries/disability-critical/>.

⁶⁰ *Ibid.*

⁶¹ Sami Schalk, “Critical Disability Studies as Methodology” (2017) 6:1 *Lateral*. 1 at 1. Available online: <https://csalateral.org/issue/6-1/forum-alt-humanities-critical-disability-studies-methodology-schalk/>.

⁶² Jonas-Sébastien Beaudry, “Beyond (Models of) Disability?” (2016) 41:2 *J Medicine & Philosophy*. 210-228. <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4886464/>.

⁶³ Devlin & Pothier, *supra* note 6 at 2.

⁶⁴ *Ibid.*

supremacy of who has the power to decide the economic, political, and social benefits of persons with disabilities.⁶⁵

Rosemarie Garland-Thomson also offers further insights on CDT. She highlights how the concept of disability influences various aspects of culture, such as “institutional structures, social identities, cultural practices, political beliefs, historical communities, and the universal human experience of embodiment.”⁶⁶ Drawing on the core insight of the social model, Garland-Thomson suggests that ability and disability are more a product of societal constructs rather than inherent traits, but adds that this happens through an “ability/disability” system.⁶⁷ She observes that disability theorists can adapt or disrupt this ability/disability system to denaturalize disability.⁶⁸ Tremain agrees with her that an essential task of critical disability theory is the denaturalization of disability.⁶⁹ This means challenging the differences accepted on the social model between disability and impairment, where one is natural and the other socially constructed.⁷⁰ Tremain agrees that the social constructionist view of disability is an improvement from traditional ideas.⁷¹ She believes it is problematic because it separates disability, which society sees as a negative label for an impairment, from an impairment, which is seen as a natural flaw.⁷² She argues that even the term ‘impairment’ carries biases because it is a medicalized concept that assumes a perfect standard and views those who are impaired as flawed.⁷³

⁶⁵ Marcia Rioux & Michael Prince, “The Canadian Political Landscape of Disability: Policy Perspectives, Social Status, Interest Groups and the Rights Movement” in A. Puttee, ed, *Federalism, Democracy and Disability Policy in Canada*, (Montreal & Kingston, ON: McGill-Queen’s University Press, 2002) at 1-10.

⁶⁶ Garland-Thomson Rosemarie, “Integrating Disability, Transforming Feminist Theory” (2002) 14:3 NWSA J. 4.

⁶⁷ *Ibid* at 4.

⁶⁸ *Ibid*.

⁶⁹ Shelley Tremain, *Foucault and Feminist Philosophy of Disability*, (Ann Arbor, MI: University of Michigan Press, 2017) at 33.

⁷⁰ Helen Meekosha & Russell Shuttleworth, “What’s So ‘Critical’ About Critical Disability Studies?” (2009) 15:1 Austl J. 50. Online: https://www.researchgate.net/publication/258919369_What's_So_Critical_About_Critical_Disability_Studies.

⁷¹ Tremain, *supra* note 69 at 47.

⁷² *Ibid*.

⁷³ *Ibid*.

A critical theory of disability also specifically challenges a liberal approach to disability, which assumes that production is a necessary component of valued personhood and that societal organization structures based on able-bodied standards of production cannot be avoided.⁷⁴ Critical disability theory aims to prove these assumptions wrong and empower persons with disabilities to engage and realize themselves fully in society.⁷⁵ Liberalism does not provide adequate solutions to the structural and attitudinal barriers preventing persons with disabilities from fully enjoying certain rights.⁷⁶ CDT is a response to liberalism's and the social model's limitations. It is a larger movement of politics and policies.

In summary, CDT shifts from liberalism, the social model of disability, and the medical model of disability to a more critical human rights approach that promotes equitable access to all facets of social life.⁷⁷

1.3 Why the Critical Model?

To summarize the three models of disability, the medical model conceives of persons with disabilities as people who are less able to perform certain functions in society.⁷⁸ Conversely, the social model explains that a person may have an impairment but not necessarily a disability.⁷⁹ In this view, individuals are disabled by society's attitudes and the imposition of physical barriers that prevent them from reaching their full potential.⁸⁰ Therefore, society has to create room for the disabled to function. CDT, on the other hand, advocates for a systematic transformation – including a deep transformation of ways of thinking - to address the underlying causes of disability

⁷⁴ Devlin & Pothier, *supra* note 6 at 2.

⁷⁵ *Ibid.*

⁷⁶ *Ibid.*

⁷⁷ Tremain, *supra* note 69 at 47.

⁷⁸ Erin E Andrews, "Disability Models" in Maggi A. Budd et al., *Practical Psychology in Medical Rehabilitation*, (Springer Intl Publishing AG Switzerland; Springer Nature, 2017) at 78.

⁷⁹ *Ibid* at 79.

⁸⁰ *Ibid.*

oppression and advance social justice for all.⁸¹ While the social and medical models have their advantages, the critical model provides a more comprehensive perspective on understanding disability in relation to oppression and power dynamics.

Disability is a multifaceted issue that involves social beliefs, institutional goals, political will, impairment, and functional limitations.⁸² Power dynamics are at play, determining who and what is valued and who and what is ostracized.⁸³ CDT challenges a justice system that prioritizes the politics of “just us.”⁸⁴ Context is crucial in this process, as CDT is based on the lived experiences of individuals with disabilities rather than being disconnected from real-life experiences.⁸⁵

In this thesis, CDT will be used to advocate for stakeholders to invest their resources into promoting the education of persons with disabilities and to seek the attention of policymakers to reform the laws affecting the educational rights of persons with disabilities. CDT is preferred over the social model due to its systematic focus on oppression and power imbalances to address the root causes of social inequality for persons with disabilities.

1.4 Disability in Context

The above theories can only be appreciated in light of the social realities they help us to understand and challenge. Society often portrays persons with disabilities as being dependent, burdensome, unfortunate, abnormal, incapable, and expensive to accommodate.⁸⁶ This is often because of their appearance, speech, reactions to situations, and mobility, among other things.⁸⁷

⁸¹ *Ibid.*

⁸² Devlin & Pothier, *supra* note 6 at 9.

⁸³ *Ibid.*

⁸⁴ *Ibid.*

⁸⁵ *Ibid.*

⁸⁶ Donna Lero, “Introduction to the Special Issue on Disability and Work: Toward Re-Conceptualizing the ‘Burden’ of Disability” (2012) 32:3 U Guelph, Ont: Disability Studies Q at 5.

⁸⁷ *Ibid.*

Persons with disabilities are frequently excluded from social activities⁸⁸ and from positions of prominence in society because of an assumption that they are unable to be productive and efficient due to their disability.⁸⁹ It is a common misconception that by discriminating against persons with disabilities, society is only harming them. But when persons with disabilities are denied opportunities to use their unique talents and skills, society also denies itself potential solutions to important social and economic challenges. This exclusion may ultimately lead to societal decline. Most fundamentally, however, as stated in Article 2 of the *Universal Declaration of Human Rights*,⁹⁰ “Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind.”⁹¹ This is to state a basic principle of equal moral respect for all human beings. In short, including persons with disabilities in social activities and policymaking is not a favour but a recognition of their human rights.

International law increasingly reflects the fact that disability rights are human rights. In the past two decades, there has been a growing push for the inclusion of underrepresented populations worldwide through advocacy, laws, and policies. Examples of such initiatives include the adoption of the United Nations’ 2030 Agenda for Sustainable Development⁹² and the CRPD.

1.4.1 Defining Disability

While I have examined theoretical models of disability and adopted a critical model, it remains essential to define the term ‘disability’ in the sense of who fits the descriptor “persons with disabilities” for the purpose of this thesis. The introduction to the CRPD emphasizes that

⁸⁸ Marsela Dauti, “The Social Exclusion Profile of Persons with Disabilities” (2015). Online: <https://www.undp.org/sites/g/files/zskgke326/files/migration/al/Profile-PWD-ang-web.pdf>.

⁸⁹ Epic Assist, *supra* note 44.

⁹⁰ *Universal Declaration on Human Rights*, 10 December 1948, (GA Resolution 217 A). [UDHR].

⁹¹ *Ibid* at article 2.

⁹² 2030 Agenda for Sustainable Development of the UN GA, 25 September 2015, A/RES/71/313, (entered into force on 6 July 2017) [SDGs].

disability is a dynamic and evolving concept.⁹³ Thus, what constitutes disability may change to reflect changes in public policy and shared ideas about universal human rights.⁹⁴ It is challenging to state a comprehensive and cohesive definition of disability because any definition has enormous and complex ramifications for individuals, societies, the economy, politics, and policy.⁹⁵ As noted above, disability may be defined in ways that reflect a medical, critical, or social model. Various laws and bodies have attempted to define disability or state criteria to establish who qualifies as a person with a disability.

While the CRPD resists a fixed definition of disability and embraces the idea that it is a concept always in evolution, it nonetheless defines persons with disabilities as “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.”⁹⁶ As a comparison, the International Classification of Functioning, Disability and Health (ICF)⁹⁷ adopts the medical model and defines disability as “an umbrella concept that embraces impairments, activity limitations, and participation restrictions.”⁹⁸ The Centers for Disease Control and Prevention also adopts the medical model and defines disability “as any condition of the body

⁹³ *Ibid.*

⁹⁴ Leslie Francis & Anita Silvers, “Perspectives on the Meaning of ‘Disability’” (2016) 18:10 Chicago: American Medical Association J of Ethics at 1025-1033. Online: <https://journalofethics.ama-assn.org/article/perspectives-meaning-disability/2016-10>.

⁹⁵ Patric Fournier-Savard, Chantal Mongeon & Susan Crompton, “Living with Disability Series: Help with Activities of Daily Living for People with a Disability” (2014). Online: <https://www150.statcan.gc.ca/n1/pub/11-008-x/2010002/article/11345-eng.htm>.

⁹⁶ Act 715, *supra* note 3, see art 1.

⁹⁷ The International Classification of Functioning, Disability and Health (ICF) is “a World Health Organization framework for measuring health and disability at individual and population levels.” See World Health Organisation, “International Classification of Functioning, Disability and Health (ICF).” Online: <https://www.who.int/standards/classifications/international-classification-of-functioning-disability-and-health#:~:text=ICF%20is%20the%20WHO%20framework,and%20measure%20health%20and%20disability>.

⁹⁸ BC Association of Community Response Network, “People with Disability.” Online: <https://bccrns.ca/resources/developmental-disabilities>.

or mind that makes it more difficult for the person with the condition to do certain activities and interact with the world around them.”⁹⁹

Otherwise, legislation tends to define disability in ways that reflect specific statutory purposes - often as a physical condition, medical condition, or both. However, as noted, the term is not universally understood or agreed upon¹⁰⁰ and is often defined in ways that fail to encompass all aspects of this complex and evolving phenomenon. Again, as reflected in the CRPD, the meaning of disability can vary depending on a person’s circumstances or environment, including culture – as well as according to the purpose for which it is defined. Alison Kafer takes the position referenced in the CRPD and refuses a “fixed definition” of disability, arguing instead that it is best to keep the definition open to future elaboration.¹⁰¹ Drawing on Joan W. Scott’s concept of “collective affinity,” Kafer characterizes disability as “a complex array of traits that are attributed to specific individuals.”¹⁰² The CRPD’s description of disability, which attempts to both locate disability as distinct and identifiable and to remain open to its evolution, appears more comprehensive and open-ended than other definitions.¹⁰³ It reflects the social model of disability and leaves room for future inclusivity.¹⁰⁴ Therefore, for this research, the CRPD’s description, which resists the final or determinative definition of disability (while nonetheless providing some rough bearings on who is and is not disabled), will be adopted.

⁹⁹ Centers for Disease Control and Prevention, “Disability and Health Overview.” <https://www.cdc.gov/ncbddd/disabilityandhealth/disability.html#:~:text=According%20to%20the%20World%20Health,%2C%20walking%2C%20or%20problem%20solving.> [CDC].

¹⁰⁰ Stienstra, *supra* note 46 at 4.

¹⁰¹ Nirmala Erevelles & Alison Kafer, “Committed Critique: An Interview with Nirmala Erevelles” in Susan Burch and Alison Kafer, eds., *Deaf and Disability Studies*, (Washington, DC: Gallaudet University Press, 2010) at 204–221.

¹⁰² *Ibid.*

¹⁰³ Katerina Kazou, “Analysing the Definition of Disability in the UN Convention on the Rights of Persons with Disabilities: Is It Really Based on a Social Model Approach?” (2017) 23 *Intl J Mental Health & Capacity Law* 1 at 41-44.

¹⁰⁴ *Ibid* at 45.

1.4.2 Types of Disabilities

Just as defining disability in a broad or global sense is challenging, it is also challenging – but necessary – to distinguish different types of disabilities. Disability can set some people apart from others in society, based on how they look, act, move, or need support or assistance.¹⁰⁵ It may affect a person’s mobility, learning capacity, or ease of communication.¹⁰⁶ Disability may be temporary, permanent, visible, invisible, minimal, or substantial.¹⁰⁷ It can also be related to conditions present at birth and may affect functions later in life, associated with developmental conditions that become apparent during childhood, arise with an injury, or are associated with a longstanding of progressive condition.¹⁰⁸

Various forms of disability exist. These include those that affect a person’s vision, hearing, movement, remembering, learning, communication, thinking, mental health, and social relationships.¹⁰⁹ Disability can be visible or invisible, constant or periodic, and can change in severity or experience over time.¹¹⁰ For my research, disability will be grouped into two categories: evident and non-evident disabilities.

Evident disabilities are those forms of disability visible to others. Thus, it does not require one to interact with a person with a disability to know that he or she has a particular form of disability.¹¹¹ Evident disabilities may also be referred to as physical disabilities. Examples of these include amputation, cerebral palsy, and movement defects, to name a few. Non-evident disabilities are those forms of disability invisible to others.¹¹² This form of disability requires more than

¹⁰⁵ Ashley Eisenmenger, “Ableism 101 - What is Ableism? What Does It Looks Like?” (2019). Online: <https://www.accessliving.org/newsroom/blog/ableism-101/>.

¹⁰⁶ Healey, *supra* note 51 at 1.

¹⁰⁷ *Ibid.*

¹⁰⁸ CDC, *supra* note 99.

¹⁰⁹ *Ibid.*

¹¹⁰ Canadian Human Rights Commission, “Barriers and Disabilities.” Online: <https://www.accessibilitychrc.ca/en/barriers-and-disabilities>.

¹¹¹ CDC, *supra* note 99.

¹¹² *Ibid.*

superficial observation of a person to identify that the person has a disability.¹¹³ Examples of these include mental health disorders, autism, deafness, and learning disability.

1.5 Global Statistics on Persons with Disabilities and Education

The World Health Organization (WHO) states that “disability results from the interaction between health conditions such as dementia, blindness or spinal cord injury, and a range of environmental and personal factors.”¹¹⁴ Based on the social model of disability, it provides that approximately 1.3 billion people, thus 16 percent of the world’s population, are currently living with a disability.¹¹⁵ WHO refers to them as the world’s largest minority.¹¹⁶ It is estimated that out of the 1.3 billion people in the world with disabilities, over 80 million are Africans with physical impairments, mental health issues, and birth differences.¹¹⁷ WHO attributes this significant number to the ageing population and the rise in the incidence of non-communicable diseases.¹¹⁸ It is reported that approximately 90% of children with disabilities in developing nations are not enrolled in educational institutions.¹¹⁹

1.6 Inclusive Education

In the 21st century, education is one of an individual’s most valuable assets. This is why it is essential to improve inclusive education and increase the number of educated persons with

¹¹³ *Ibid.*

¹¹⁴ World Health Organization, “Disability” (2023). Available at <https://www.who.int/news-room/factsheets/detail/disability-and-health>. [WHO].

¹¹⁵ *Ibid.*

¹¹⁶ *Ibid.*

¹¹⁷ Finbarr Toesland, “A Double Challenge for the Disabled” (2019) <https://www.un.org/africarenewal/magazine/december-2018-march-2019/double-challenge-disabled#:~:text=More%20than%2080%20million%20Africans,defects%20and%20other%20physical%20impairments.>

¹¹⁸ WHO, *supra* note 114.

¹¹⁹ United Nations, “Factsheet on Persons with Disabilities.” Available online: <https://www.un.org/development/desa/disabilities/resources/factsheet-on-persons-with-disabilities.html#:~:text=On%20average%2C%2019%20per%20cent.cent%20among%20the%20better%20educate> .

disabilities in Ghana. Inclusive education may be defined as “the full inclusion of children with diverse abilities in all aspects of schooling that other children can access and enjoy.”¹²⁰ Inclusive education is “where students of all abilities learn together in the same classroom environment.”¹²¹ It involves creating an education system that embraces inclusion, where everyone can learn together and have their individual needs met.¹²²

Various approaches to achieving inclusive education exist, which raises significant concerns about what constitutes best practice, what qualifies as evidence of such practice, and how to identify it.¹²³ This is a crucial issue that needs to be addressed worldwide. Yet, practically speaking, analysis and interpretation of what counts as good law or best practices may differ based on various factors, such as societal norms, cultural beliefs, and available resources.¹²⁴ In recent years, the emphasis in many countries has shifted from supporting inclusive education by providing special resources to students with disabilities to lowering barriers to education for all pupils.¹²⁵ This has highlighted how important education is in promoting social justice for everyone, especially but not exclusively for the disabled. One may not be disabled but also face barriers relating to gender and race, among others.

¹²⁰ Tim Loreman et al., *Inclusive Education: A Practical Guide to Supporting Diversity in The Classroom*, 2nd ed. (NSW: Allen & Unwin, 2010) at 2.

¹²¹ General Comment No. 4, *supra* note 17 at 2.

¹²² *Ibid.*

¹²³ Lani Florian, “What Counts as Evidence of Inclusive Education?” (2014) 29:3 *Eur J Special Needs Education*, at 286–294. Available online: <https://doi.org/10.1080/08856257.2014.933551>; See also Daniel Mujius & David Reynolds, *Effective Teaching: Evidence and Practice*, 4th ed. (UK: Sage, 2017).

¹²⁴ Sip Jan, et al., *Inclusive Education: A Global Agenda*, ed. (NY: Routledge, 1997).

¹²⁵ Lorraine Wapling, *Inclusive Education and Children with Disabilities: Quality Education for All in Low and Middle-Income Countries* (UK: Cambridge Press, 2016) at 21.

1.6 United Nations Convention on the Rights of Persons with Disabilities on Inclusive Education

It is crucial to provide a brief introduction to the CRPD because of its essential role in analyzing the legal systems in Ghana and Canada. This instrument establishes international standards for the rights of persons with disabilities, and since these two States have signed the instrument, they are obligated to incorporate it into their domestic legislation.¹²⁶ Considering their promised adherence to the CRPD, much of my analysis in this thesis will focus on whether the laws in Ghana and Canada align with international standards.

The CRPD is the first international instrument to involve persons with disabilities in its advocacy, negotiation, and implementation processes.¹²⁷ Critics have pointed out that previous regional and international human rights laws concerning persons with disabilities were not effective in addressing the significant challenges they face.¹²⁸ This is attributed in part to the lack of involvement of persons with disabilities in the development of those laws.¹²⁹ The CRPD is international human rights legislation “which exists to promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all disabled persons.”¹³⁰ It is the first legally binding international instrument that specifically addresses quality inclusive education for persons with disabilities.¹³¹

The CRPD was adopted in 2006 and came into force in 2008, following decades of efforts by advocates around the world to change attitudes and approaches towards persons with

¹²⁶ CRPD, *supra* note 4 at art 4(1).

¹²⁷ Wildeman, *supra* note 49 at 54.

¹²⁸ *Ibid* at 53.

¹²⁹ *Ibid*.

¹³⁰ National Disability Authority, “United Nations Convention on the Rights of Persons with Disabilities” (2022). Online: <https://nda.ie/disability-policy/uncrpd>.

¹³¹ *Ibid*.

disabilities.¹³² As of December 2021, 183 countries and the European Union had ratified it.¹³³ It takes to a “new height the movement from viewing persons with disabilities as ‘objects’ of charity, medical treatment and social protection towards viewing persons with disabilities as ‘subjects’ with rights, who are capable of claiming those rights and making decisions for their lives based on their free and informed consent as well as being active members of society.”¹³⁴ The CRPD takes its inspiration from the UDHR¹³⁵ and applies its principles to persons with disabilities.¹³⁶ It encompasses civil, political, social, and economic rights such as freedom from discrimination, equal treatment, education, and healthcare.¹³⁷ This paper focuses on the right to education under the CRPD, which can be found in article 24.

Article 24(1) of the CRPD provides that “States Parties recognize the right of persons with disabilities to education.”¹³⁸ With a view to realizing this right without discrimination and on the basis of equal opportunity, States Parties shall ensure an inclusive education system at all levels and lifelong learning.¹³⁹ According to the CRPD, inclusive education should extend from pre-school to post-secondary education.¹⁴⁰ Article 24(2) provides that students with disabilities are not to be excluded from school based on their disabilities.¹⁴¹ Persons with disabilities should have access to free and compulsory primary and secondary education just like everyone else.¹⁴² To enjoy this right, the CRPD provides that they have a right to the support they need to facilitate their

¹³² United Nations Committee on the Rights of Persons with Disabilities, “Background to the Convention.” Online: <https://www.ohchr.org/en/treaty-bodies/crpd/background-convention>. [UN Committee].

¹³³ National Disability Authority, *supra* note 130.

¹³⁴ UN Committee, *supra* note 132.

¹³⁵ UDHR, *supra* note 90.

¹³⁶ Lucy Series, “Disability and Human Rights,” in Nick Watson & Simo Vehmas, eds, *Routledge Handbook of Disability Studies*, 2nd ed. (NY: Routledge, 2019) at 73. Online: <https://www.ncbi.nlm.nih.gov/books/NBK558160/>.

¹³⁷ UN Committee, *supra* note 132.

¹³⁸ CRPD, *supra* note 4 at art 24(1).

¹³⁹ *Ibid.*

¹⁴⁰ General Comment No. 4, *supra* note 17 at 4; See also CRPD, *supra* note 4 at art 24(1).

¹⁴¹ CRPD, *supra* note 4, see art 24(2).

¹⁴² *Ibid.*

education.¹⁴³ The CRPD explains further that State Parties must take the necessary steps to provide tools and technology and facilitate methods like Braille, alternative script, learning of sign language, peer support, and mentoring to help persons with disabilities enjoy full and equal participation in education.¹⁴⁴ The CRPD provides in Article 24(4) that State Parties should “employ teachers, including teachers with disabilities, who are qualified in sign language and/or Braille, and to train professionals and staff who work at all levels of education.”¹⁴⁵ By so doing, it will help incorporate disability awareness and the necessary educational techniques and materials to support persons with disabilities.¹⁴⁶ Lastly, Article 24(5) provides that inclusive education should extend to tertiary education, vocational training, adult education and lifelong learning.¹⁴⁷

The CRPD has a committee known as the Committee on the Rights of Persons with Disabilities (the Committee). The Committee monitors the implementation of the CRPD.¹⁴⁸ At its 14th session, the Committee resolved to develop a general comment¹⁴⁹ and guidelines on Article 24 of the CRPD for its State Parties and anyone with an interest in inclusive education.¹⁵⁰ This guideline explores the right to inclusive education for all persons with disabilities and what is needed to achieve an inclusive education system.¹⁵¹ The Committee aims to use the guideline to assist State Parties in fulfilling their obligations under the CRPD.¹⁵²

The Committee provides that accessibility should include access to buildings, information and communication systems, textbooks and learning materials, teaching methods and assessments,

¹⁴³ *Ibid.*

¹⁴⁴ *Ibid.*

¹⁴⁵ *Ibid* at art 24(4).

¹⁴⁶ *Ibid.*

¹⁴⁷ *Ibid* at art 24(5).

¹⁴⁸ *Ibid* at art 34(1).

¹⁴⁹ General Comment No. 4, *supra* note 17 at 1.

¹⁵⁰ CRPD, *supra* note 4 at art 24(3)-(5).

¹⁵¹ General Comment No. 4, *supra* note 17 at 1.

¹⁵² *Ibid.*

support services, classrooms and toilets, play and sports facilities, and school transport.¹⁵³ States should ensure new education buildings are accessible and set a timeframe to improve existing inaccessible buildings.¹⁵⁴ The Committee encourages States to adopt Universal Design to help work towards inclusive education. It describes Universal Design as an approach whereby “buildings and products are designed from the start to be accessible and used by people with a wide range of abilities.”¹⁵⁵ More specifically, the Committee recommends that States adopt the Universal Design for Learning (UDL) approach. This approach acknowledges that every student learns differently, requiring State Parties to adjust teaching and educational curricula to be flexible and creative.¹⁵⁶ The Committee encourages States to use multiple methods to evaluate students’ development instead of relying solely on examinations and assessments.¹⁵⁷

In its guide, the Committee acknowledges that states encounter challenges in achieving an inclusive education system and suggests some measures to overcome these challenges.¹⁵⁸ First, the Committee states that inclusive education is not the sole responsibility of education departments.¹⁵⁹ Governments of states should work together with education departments to achieve inclusive education. They are to ensure that everyone’s needs are included in mainstream education laws, policies, and planning.¹⁶⁰ Second, States should enact laws to advance inclusive education and prevent discrimination against persons with disabilities.¹⁶¹ Existing and new laws should be revised to align with international human rights standards.¹⁶² These laws should be backed by the

¹⁵³ *Ibid* at 5.

¹⁵⁴ *Ibid*.

¹⁵⁵ *Ibid* at 6.

¹⁵⁶ *Ibid*.

¹⁵⁷ CRPD, *supra* note 4 at art 24(4).

¹⁵⁸ General Comment No. 4, *supra* note 17 at 9.

¹⁵⁹ *Ibid*.

¹⁶⁰ *Ibid*.

¹⁶¹ *Ibid*.

¹⁶² *Ibid*.

Education Sector Plan of the States, outlining the implementation of an inclusive education system.¹⁶³ The Committee recommends setting a timeframe to achieve the objectives of the laws.¹⁶⁴ Third, the Committee recommends that States educate students with disabilities about their right to education and create a complaint mechanism for them to access when they feel their rights have been denied or limited.¹⁶⁵

Early identification of disabilities is crucial for understanding the specific needs and providing appropriate support for persons with disabilities.¹⁶⁶ This process also plays a key role in acknowledging the potential of persons with disabilities and addressing any barriers that may affect their educational journey.¹⁶⁷ The Committee strongly encourages collaboration among state governments and various organizations to impart education, offer training, and extend support to families of individuals with disabilities.¹⁶⁸ Moreover, it is recommended that states prioritize inclusive education from the preschool level to ensure that children with disabilities have a solid foundation for a successful life.¹⁶⁹

Again, States are encouraged to address discrepancies in data collection concerning persons with disabilities and their education status.¹⁷⁰ Accurate data collection is important because it helps governments identify the number of persons with disabilities in their states, understand the barriers preventing them from accessing education, and recognize the urgency to address these issues.¹⁷¹ To achieve inclusive education, States must invest in financial and human resources, such as learning materials, assistive technology, teacher training, and awareness-raising

¹⁶³ *Ibid.*

¹⁶⁴ *Ibid.*

¹⁶⁵ *Ibid at 10.*

¹⁶⁶ *Ibid.*

¹⁶⁷ *Ibid.*

¹⁶⁸ *Ibid.*

¹⁶⁹ CRPD, *supra* note 4 at art 24(2)(a).

¹⁷⁰ General Comment No. 4, *supra* note 17 at 11.

¹⁷¹ *Ibid.*

programs.¹⁷² Inclusive education should not only involve providing resources. The committee recommends that there should be a monitoring process to track progress.¹⁷³ States can use indicators and targets to measure the success of inclusive education plans.¹⁷⁴ Persons with disabilities should be actively involved in this process. Family members and communities should be involved too in education plans and policies.¹⁷⁵ This will help schools and communities to better understand and respond to the needs of students with disabilities.

In sum, the CRPD's provisions on inclusive education of students with disabilities in Article 24, particularly read in light of the Committee's general comment, go beyond making the physical environment accessible to persons with disabilities or educating students with and without disabilities in the same environment. Rather, the CRPD requires providing persons with disabilities equitable access to education at all levels, including lifelong learning. This may mean fundamentally reforming education systems.¹⁷⁶ The CRPD also calls on society to respect the dignity and rights of persons with disabilities.¹⁷⁷ Ratifying the CRPD not only poses a significant challenge but also offers a unique opportunity for State Parties to meet their duties under Article 24 by advancing inclusive education for students with disabilities.¹⁷⁸

There is, however, an important ongoing debate about whether inclusive education or segregation is better for students with disabilities or special needs. One school of thought believes that to be equal, students with disabilities should be placed in the same education environment as

¹⁷² *Ibid.*

¹⁷³ *Ibid* at 12.

¹⁷⁴ *Ibid.*

¹⁷⁵ *Ibid.*

¹⁷⁶ CRPD, *supra* note 4 at art. 24(5); see also General Comment No. 4, *supra* note 17 at 13, see para 27.

¹⁷⁷ *Ibid.*

¹⁷⁸ Richard Rieser, *Implementing Inclusive Education: A Commonwealth Guide to Implementing Article 24 of the UN Convention on the Rights of Persons with Disabilities*, (Commonwealth Secretariat, Marlborough House, UK: Charlesworth Press, 2012) at 1.

students without disabilities to achieve inclusive education.¹⁷⁹ They base their argument on article 24(2)(a), which states that “persons with disabilities are not excluded from the general education system.”¹⁸⁰ The other school of thought argues that, in some cases, providing services in separate settings can be of greater benefit for students with disabilities and that true equality may require separate education in certain circumstances.¹⁸¹ Gerard Quinn argues that article 24(3)(c) of CRPD provides an “exception” to inclusion in common classrooms. Article 24(3)(c) of the CRPD provides that education of blind, deaf, and deafblind may occur “in environments which maximize academic and social development.”¹⁸² Quinn argues that, based on Article 24(3)(c), when an exception exists, there is an obligation for state parties to educate students with disabilities using “the most appropriate languages, modes, and means of communication for the individual, and in environments that maximize both academic and social development.”¹⁸³ They emphasize that this exception should not undermine the goal of inclusion as outlined in the CRPD.¹⁸⁴ The argument of whether the CRPD mandates inclusive education in regular school environments or makes exceptions in certain cases will now be discussed.

Article 24 of the CRPD requires that students with disabilities be educated in the same environment as their peers.¹⁸⁵ The CRPD mandates that state parties end the segregated education model and “ensure an inclusive education system at all levels and life-long learning.”¹⁸⁶ Article 24(2)(a) provides that “Persons with disabilities are not excluded from the general education

¹⁷⁹ Mark C Weber, “A Nuanced Approach to the Disability Integration Presumption” (2007) 156 U Pa L Rev PENnumbra. 174 at 174.

¹⁸⁰ CRPD, *supra* note 4 at art 24(2)(a).

¹⁸¹ Gerard Quinn, “A Short Guide to the United Nations Convention on the Rights of Persons with Disabilities” in Gerard Quinn & Lisa Waddington, eds, *European Yearbook of Disability Law, Vol. 1* (Portland: Intersentia, 2009) at 110.

¹⁸² CRPD, *supra* note 4 at art 24(3)(c).

¹⁸³ Quinn, *supra* note 181 at 110.

¹⁸⁴ *Ibid.*

¹⁸⁵ General Comment No. 4, *supra* note 17 at 1-2, see para 2.

¹⁸⁶ CRPD, *supra* note 4 at art. 24.

system based on disability,” and no student is to be classified as “non-educable” by any legislation.¹⁸⁷ The CRPD promotes inclusion at all levels and opposes exclusion or segregation, requiring state parties to strive towards that goal.¹⁸⁸ It continues to state that state parties are to work progressively toward providing resources to achieve their economic, social, and cultural rights, which include the right to inclusive education.¹⁸⁹ The CRPD General Comment No. 4 emphasizes that ensuring the rights of students with disabilities “is incompatible with maintaining two separate education systems: mainstream and special/segregated education.”¹⁹⁰ It further states that state parties are to work towards transferring resources from segregated environments to inclusive environments.¹⁹¹ By so doing, state parties are to provide the necessary support to students with disabilities to make it easier for them to achieve an effective education.¹⁹² Some of the measures proposed by the CRPD include individualized support measures, facilitating the learning of sign language, employing teachers qualified in sign language, and facilitating the learning of various forms of communication like Braille and many more.¹⁹³ As noted above, a counter-argument was raised by Quinn that the CRPD provides an exception to inclusion in common classrooms as provided in art 24(3)(c) of the CRPD.¹⁹⁴

While Quinn argues that the CRPD allows for exceptions in the education of blind and deaf students in special schools, the CRPD Committee’s General Comment No. 4 offers a different perspective. It clarifies that the CRPD does not tolerate segregated schools and strongly advocates

¹⁸⁷ *Ibid* at art. 24(2)(a); see also General Comment No. 4, *supra* note 17 at 7, see para 18.

¹⁸⁸ *Ibid* at art. 24(1).

¹⁸⁹ The CRPD General Comment No. 4 explains that progressive realization means that state parties have a specific and continuing obligation “to move as expeditiously and effectively as possible” towards the full realization of article 24.” See General Comment No. 4, *supra* note 17 at 14, see para 40; see also CRPD, *supra* note 4 at art 4(2).

¹⁹⁰ *Ibid* at 13, see para 39.

¹⁹¹ *Ibid* at 22, see para 68.

¹⁹² CRPD, *supra* note 4 at art. 24(2)(d).

¹⁹³ *Ibid* at art. 24.

¹⁹⁴ Quinn, *supra* note 181 at 110.

for inclusive education. This thesis aligns with the CRPD's mandate for states to work towards achieving inclusive education and not maintain segregated/special schools. The question of whether educating students with disabilities in the same or separate environment is beneficial – and if so, in what contexts - will be revisited further on in this thesis.

1.8 Thesis Outline/Structure of Thesis

This thesis will be divided into five chapters. Chapter 1 is this introductory chapter. Chapter 2 will introduce the situation of persons with disabilities in Ghana, the laws and policies regarding inclusive education for persons with disabilities in Ghana, the impact of these on the education of persons with disabilities in Ghana, and the specific challenges that persons with disabilities face in enjoying their right to education in Ghana. Chapter 3 will discuss the laws and policies on inclusive education in New Brunswick, as well as the measures taken to address the challenges faced by persons with disabilities and the province in working towards inclusive education. Chapter 4 will highlight what Ghana can learn from the laws and policies on inclusive education in New Brunswick, recommend how Ghana can increase the inclusive education of persons with disabilities, and suggest an alternative space for persons with disabilities who cannot go through formal education. The final chapter will summarize the research's findings, challenges, what is next for this research, and the conclusion.

1.9 Conclusion

This research acknowledges that education is a fundamental human right and emphasizes the unique challenges faced by individuals with disabilities in accessing quality education. Therefore, the active involvement of stakeholders, such as individuals with disabilities, their families, policymakers, and advocacy groups, is essential in the research process to ensure a comprehensive understanding of their needs and perspectives. The study aims to make meaningful

contributions to the advancement of inclusive education practices and the realization of the right to education for people with disabilities.¹⁹⁵

In the context of this LL.M thesis, it is impossible to directly engage persons with disabilities in shaping the questions explored and answers proposed herein. However, I hope that this work will contribute to such processes of engagement and advocacy.

¹⁹⁵ Boah, *supra* note 9 at 16.

CHAPTER 2 Inclusive Education in Ghana

2.0 Introduction

This chapter examines the legal regime of inclusive education in Ghana. It analyzes Ghana's statutory and constitutional provisions protecting persons with disabilities. The core argument of this chapter identifies a key defect in Ghana's legal regime on inclusive education. Ghana adopts a segregation policy in dealing with students with disabilities contrary to the inclusive position of the CRPD, to which Ghana is a signatory. This deficiency puts Ghana's regime in stark opposition to the CRPD and also questions the level of Ghana's commitment to it.

Globally, there has been increased advocacy and interest in social inclusion, and particularly inclusive education, of students with disabilities. Various countries and international organizations have developed inclusive models and accessible designs to improve the lives of persons with disabilities across many areas of society. As introduced in the prior chapter, the CRPD acknowledges that all human rights are universal, indivisible, interdependent, and interrelated.¹⁹⁶ In article 24, the CRPD recognizes and promotes the right of persons with disabilities to education at all levels, strengthens the principle of non-discrimination, and focuses on removing barriers to enjoying this right.¹⁹⁷ It mandates States Parties to adopt appropriate measures to realize this right and work towards inclusive education for persons with disabilities.

Ghana is a signatory to the CRPD. The country has laws and policies on education and has signed international laws and policies on inclusive education, yet many persons with disabilities do not get to exercise their educational rights. This chapter addresses what it means to have a disability in Ghana, how inclusive education for students with disabilities is written into the laws of the State, how inclusive education has progressed in terms of law reform and implementation

¹⁹⁶ Preamble of the CRPD, *supra* note 4; See also General Comment No. 4, *supra* note 17 at 15, see para 42.

¹⁹⁷ *Ibid* at art. 24.

over the years, what limitations exist in achieving inclusive education for persons with disabilities, and whether Ghana has adopted or is otherwise in compliance with provisions of the CRPD relating to inclusive education in its laws and policies. Along the way, this chapter provides an overview of legislation and policies in place to safeguard and advance the inclusive education of students with disabilities in Ghana.

2.1 Ghana in Context and Disability Statistics

Ghana is a country in West Africa, situated on the coast of the Gulf of Guinea.¹⁹⁸ It shares borders with Burkina Faso to the northwest and north, Togo to the east, the Atlantic Ocean to the south, and Côte d'Ivoire to the west.¹⁹⁹ The country has a population of about thirty-five million.²⁰⁰ Despite its relatively small size and population, Ghana is one of the most powerful nations in Africa, thanks in part to its abundant natural resources and in part to the fact that it was the first nation of Black Africans south of the Sahara to win independence from colonial rule.²⁰¹ It is a democratic nation that boasts a free press, a thriving civil society, an independent judiciary, and much more.²⁰² Its constitution is the *Constitution of the Republic of Ghana, 1992*.²⁰³ Chapter 5 of the 1992 Constitution addresses the fundamental human rights of the people of Ghana.²⁰⁴ Some of these rights include the right to life, freedom of speech, women's and children's rights, educational rights, and the rights of persons with disabilities. Ghana is also a signatory to various international

¹⁹⁸ Ernest B Boateng, et al. "Ghana" (2024). Available at <https://www.britannica.com/place/Ghana>.

¹⁹⁹ *Ibid.*

²⁰⁰ Simon Kemp, "Digital 2024: Ghana" (2024). Online: <https://datareportal.com/reports/digital-2024-ghana#:~:text=Population%20of%20Ghana%20in%202024,of%20the%20population%20is%20male>.

²⁰¹ *Ibid.*

²⁰² USAID, "Ghana Democratic Fact Sheet" (2023). Online: <https://www.usaid.gov/sites/default/files/2023-09/USAID-Ghana-Democracy-Fact-Sheet-230705.pdf>.

²⁰³ The 1992 Constitution, *supra* note 13.

²⁰⁴ *Ibid.*

human rights treaties, like the CRPD,²⁰⁵ the African Charter on Human and Peoples’ Rights,²⁰⁶ and the UDHR.²⁰⁷

The 2010 population and housing census conducted by the Ghana Statistical Service (GSS) reveals that approximately 3 percent of Ghana’s population has a disability.²⁰⁸ The GSS collects and analyzes data based on surveys, in a manner that is consistent with a social model of disability.²⁰⁹ The 2010 census used disability as one of the demographic categories, so that respondents were able to self-identify as disabled.²¹⁰ Age was also one of the demographics the GSS used, allowing it to track the prevalence of disability within the pre-identified age groups.²¹¹ The GSS clearly states that it did not employ a medical approach to determining disability. Instead, it used the functional model in collecting its data.²¹² Given that this thesis employs a critical model of disability, which is an advanced social model, the response to the census resonates with this work as it represents people’s lived experiences of barriers while interacting with society.

Research indicates that 20 percent of children between the ages of 6 and 24 with disabilities in Ghana have never received any formal education.²¹³ Many young people with disabilities either

²⁰⁵ CRPD, *supra* note 4.

²⁰⁶ African Charter on Human and Peoples’ Rights, 1 June 1981, CAB/LEG/67/3 (entered into force 21 October 1986) [Banjul Charter].

²⁰⁷ UDHR, *supra* note 90.

²⁰⁸ Ghana Statistical Service, “Report on Population and Housing Census, 2010 (Summary).” 1 at 11-12. Online: https://www.statsghana.gov.gh/gssmain/storage/img/marqueupdate/Census2010_Summary_report_of_final_results.pdf; United Nations Partnership on the Rights of Persons with Disabilities, “Implementing Essential Pre-Conditions to Advance the Rights of Persons with Disability in Ghana” (2024). Online: <https://unprpd.org/programme/ghana/>. [UNPRPD]. A recent population and housing census was conducted by the Ghana Statistical Service in 2021. However, the number of persons with disabilities was not recorded. There is no record or discussion on persons with disabilities. See Ghana Statistics Service, “Ghana 2021 Population and Housing Census Publications” (2024). Online: [https://www.statsghana.gov.gh/gssmain/fileUpload/pressrelease/Population_projection_280624_final_ffa2\[1\]\[2\]_with_links_final_website.pdf](https://www.statsghana.gov.gh/gssmain/fileUpload/pressrelease/Population_projection_280624_final_ffa2[1][2]_with_links_final_website.pdf).

²⁰⁹ *Ibid.*

²¹⁰ *Ibid.*

²¹¹ *Ibid.*

²¹² *Ibid* at viii.

²¹³ Ayisha Gomda et al., “Access to Education for Persons with Disabilities in Ghana: A Review” (2022) 15(1):50 *Environmental Sciences Proceedings*. 1 at 1. Online: <https://doi.org/10.3390/envirosci2022015050>.

drop out of basic education very quickly or never have the opportunity to be educated.²¹⁴ Those who do attend school typically experience social stigma and discrimination.²¹⁵ Schools, moreover, often have insufficient resources to accommodate children with disabilities, which leads to higher numbers of children with disabilities leaving the formal education system earlier than their non-disabled peers.²¹⁶

2.1.1 Disability Advocacy Groups in Ghana

Some organizations in Ghana that advocate for disability rights include Enlightening and Empowering People with Disabilities,²¹⁷ the Ghana National Association of the Deaf (GNAD),²¹⁸ and the Mental Health Foundation of Ghana.²¹⁹ These organizations have an umbrella union called the Ghana Federation of Disability (GFD) Organizations.²²⁰

GFD was created in 1987 to unite different disability organizations. GFD promotes disability awareness and advocates for persons with disabilities to obtain work, education, and

²¹⁴ A. Kniel & C. Kniel, *Handbook for Starting and Running a Unit for Special Needs Children Attached to a Regular School*, (Winneba, Ghana: German Technical Cooperation, 2008) 1 at 2; UNICEF, “Inclusive Education” (2019). Online: <https://www.unicef.org/ghana/inclusive-education>.

²¹⁵ *Ibid.*

²¹⁶ Lawrence K Ametepee, & Dimitris Anastasiou, “Special and Inclusive Education in Ghana: Status and Progress, Challenges and Implications” (2015) 41 Intl J Educational Development. 143 at 151. <https://doi.org/10.1016/j.ijedudev.2015.02.007>.

²¹⁷ Enlightening and Empowering People with Disabilities is a non-governmental organization in Ghana. It was founded in 2012. EEPD Africa analyzes policies, creates awareness, advocates and influences change in favour of people with disabilities in Africa, and liaises with individuals and organizations in their countries to work towards equality of opportunities by using universal designs proposed by the UNCRPD. Online: <https://sites.google.com/view/eepdafrika/home>. [EAfrica].

²¹⁸ Ghana National Association of the Deaf was established in 1968. It is a national organization dedicated to empowering deaf individuals in Ghana and ensuring fair treatment and full participation for deaf individuals in society. GNAD also aims to ‘influence national legislation, policies, and programs for disability inclusion as well as the empowerment of organizations of persons with disabilities for advocacy and their sustainability.’ Online: <https://gnadgh.org/job-vacancy/>. [GNAD].

²¹⁹ Mental Health Foundation of Ghana was formed in 2013. Its vision is to have “a society in which mental illness will be understood and accepted and that people with mental illness will no longer experience stigma, and society will treat them with the same respect and dignity as is provided to any other person.” Online: <https://www.mhinnovation.net/organisations/mental-health-foundation-ghana>.

²²⁰ The Ghana Federation of Disability Organisations, formerly the Ghana Federation of the Disabled, was established in 1987. It is a national umbrella of organizations of persons with disabilities with full legal status under the laws of Ghana. Online: https://www.ohchr.org/sites/default/files/lib-docs/HRBodies/UPR/Documents/Session14/GH/JS2_UPR_GHA_S14_2012_JointSubmission_2_E.pdf. [GFD].

medical care.²²¹ The enforcement of the provisions of the *Persons with Disability Act* is the primary goal of GFD.²²²

2.1.2 Misconceptions About Disability in Ghana

Persons with disabilities in Ghana face discrimination, exclusion, and ill-treatment.²²³ This reflects, in part, attitudes that are deeply rooted in cultural and religious beliefs and practices.²²⁴ Diverse traditional explanations and opinions are given as to the causes of disability. In Ghana, especially in the rural areas, it is believed that people with disabilities are possessed by evil spirits or other supernatural forces.²²⁵ Some people attribute disability to sorcery, witchcraft, vengeance for wrongdoing, taboos, and ancestor curses.²²⁶

In a region of Ghana called Brong Ahafo, research has revealed that some parents believe in an African mystical doctrine that suggests one can become wealthy by changing another person's destiny through sacrifice to deities. This unscientific process is said to result in the person losing their intellectual abilities and becoming part of the disabled group. The research explains that some parents have used this process to change the destiny of their children in order to become wealthy, which has led to their children developing intellectual disabilities.²²⁷ Furthermore, disabled newborns in the upper regions of Ghana are lethally poisoned and given the term "spirit

²²¹ The Borgen Project, "Disability and Poverty in Ghana: A Fight for Education" (2021). Available online: <https://borgenproject.org/disability-and-poverty-in-ghana/>.

²²² *Ibid.*

²²³ Justice Srem-Sai, "The Hugger-Mugger of Enforcing Socio-Economic Rights in Ghana: A Threat to The Rights of Persons with Disabilities" (2015) 3 *African Disability Rights Yearbook* 135-159. 136 Online: <http://dx.doi.org/10.17159/2413-7138/2015/v3n1a6>.

²²⁴ *Ibid* at 136.

²²⁵ *Ibid.*

²²⁶ Adam Awini et al., "Educating Persons with Disabilities: A Policy or Reality? The Ghanaian Experience" (2022) 8:1 *Eur J Special Education Research*. 121 at 122.

²²⁷ Auberon Jeleel Odoom et al., "Report on the Level of Stigmatization and Exclusion of Persons with Intellectual Disability and Their Families in Ghana" (2012) 1 at 11. Online: <https://www.medbox.org/document/report-on-the-level-of-stigmatization-discrimination-and-exclusion-of-persons-with-intellectual-disabilities-and-their-families-in-ghana>.

child” by witch doctors.²²⁸ These newborns are believed to be a curse from evil spirits to their parents, meaning that if they are not killed, their parents will never be happy.²²⁹

Family members and friends of persons with disabilities also get stigmatized. Parents of persons with disabilities find it difficult to allow their children to go out of the house and mingle with other children, not to mention sending them to school. Many families in Ghana would rather hide their relatives with disabilities from society than risk stigmatization.²³⁰ Komabu-Pomeyie, a polio survivor and one of the influential advocates for persons with disabilities rights in Ghana,²³¹ has recounted how her father viewed her disability as a shame to the family and, in the end, gave up on her.²³² One day, she and her mother woke to her father’s letter on their table, which read, “I cannot live with this thing.”²³³

The persistence of these beliefs is due to ignorance, lack of advocacy, and limited awareness of the importance of involving persons with disabilities in everyday activities and their contributions to society. These attitudes and misconceptions result in persons with disabilities being denied opportunities to showcase their abilities and to access education, career opportunities, and public spaces.²³⁴ Yet, there is evidence to suggest these beliefs and practices are gradually disappearing, especially in urban areas, possibly in part the result of legislation that protects the rights of persons with disabilities.²³⁵

²²⁸ Anas Aremeyaw Anas, “Spirit Child,” Al Jazeera (10 January 2013). This is an undercover Investigation by Anas, an investigative journalist in Ghana, into the ritual killing of disabled Ghanaian children deemed to be possessed by evil spirits. Online: <http://www.aljazeera.com/programmes/peopleandpower/2013/01/201319121124284358.html>.

²²⁹ *Ibid.*

²³⁰ *Ibid.*

²³¹ Sefakor Komabu-Pomeyie is a survivor of polio. She started Enlightening and Empowering People with Disability (Eepd Africa) in 2012. Eepd Africa is one of the many organizations in Ghana that advocates for and assists persons with disabilities. See The Borgen Project, *supra* note 221.

²³² *Ibid.*

²³³ *Ibid.*

²³⁴ Awini, *supra* note 226 at 122.

²³⁵ Emma Seyram Hamenoo & Victoria Dayan, “Inclusive Education and Disabilities: Narratives from Ghana” (2021) 32:1. 39 at 39. Online; <https://nordopen.nord.no/nordxmlui/bitstream/handle/11250/2764465/Hamenoo.pdf?sequence=5>

2.2 History of Education of Persons with Disabilities in Ghana

Education is a right for all Ghanaian citizens, including persons with disabilities.²³⁶ Article 25 of the 1992 Constitution provides that all persons in Ghana shall have equal educational opportunities and access to educational facilities to realize that right fully.²³⁷ However, not all persons in Ghana enjoy this right or enjoy it in its full capacity.

Education for persons with disabilities was started in Ghana by individuals, missionaries, and churches.²³⁸ In 1934, a couple, Mr. and Mrs. Haker, missionaries in Ghana and tutors at the Presbyterian Training College, took it upon themselves to educate two visually impaired cousins, teaching them literacy and giving them daily living skills. The colonial administration endorsed this initiative, formalized it, and set up the first school for the visually impaired in 1936 in Gold Coast, now Ghana.²³⁹

In 1945, a Christian mission in Ghana, known as the Basel Mission, set up a further special school for children with visual and other impairments.²⁴⁰ In three years, the Presbyterian and Methodist churches established a special school for blind students at Wa in the northern region of Ghana.²⁴¹ Other special schools established were the Cape Coast School in 1970, Nchaban School for the Deaf in 1971, Twin City School for the handicapped in 1976, and Shalom Special School in Nkoranza in 1998.²⁴² After independence in 1957, the government took over providing education for children with disabilities.²⁴³ The *Educational Act of Ghana, 1961*²⁴⁴ required the government to provide compulsory and free education to all children, including those with

²³⁶ *Ibid.*

²³⁷ 1992 Constitution, *supra* note 13 at art 25.

²³⁸ Awini, *supra* note 226 at 122.

²³⁹ *Ibid* at 122-123.

²⁴⁰ Jan, *supra* note 124.

²⁴¹ *Ibid.*

²⁴² Ocloo Nyadu & Dogbe, *The Foundation of Special Education for Children with Disability*, (Accra: Salt and Light Press, 2002) at 9.

²⁴³ EAfrica, *supra* note 216.

²⁴⁴ Educational Act of Ghana, 1961 (Act 87). [Act 87].

disabilities.²⁴⁵ In 1988, Ghana had seventeen schools for students with disabilities.²⁴⁶ Between 2001 and 2006, the number of students with disabilities in Ghana enrolled in special schools increased from 3361 to 4722.²⁴⁷ Ghana's approach, like the approach in Canada and other Western nations, was to create distinct or specialized schools only for students with disabilities, and even specific kinds of disabilities, rather than try to integrate them into inclusive community schools.

In 1996, the government of Ghana introduced a policy known as Free Compulsory Universal Basic Education (FCUBE), which was later implemented in 2005.²⁴⁸ One of the aims of FCUBE was to provide quality basic education for all children of school-going age in Ghana.²⁴⁹ Although this policy FCUBE was intended to increase children's access to education, it did not provide for the inclusion of children with disabilities.²⁵⁰ Interestingly, after 17 years of implementing FCUBE, data from the Ghana Statistics Service in 2014 shows that over 1.2 million children with disabilities are still unenrolled.²⁵¹

In 2003, Ghana's Ministry of Education developed an Education Strategic Plan (ESP) 2003-2015, which aimed to have all students with any form of disability in schools by 2015.²⁵² This was part of a UNESCO initiative for member states to develop an action plan to achieve

²⁴⁵ Gomda, *supra* note 213 at 3.

²⁴⁶ Ametepee, *supra* note 216 at 145.

²⁴⁷ Jane H Anthony, "Access to Education for Students with Autism in Ghana: Implications for EFA" (2009). Background paper prepared for the Education for All Global Monitoring Report. Online: <https://unesdoc.unesco.org/ark:/48223/pf0000186588>.

²⁴⁸ Ernest Bako, "Over 1.2M Children Still Not in School After 17 Years of FCUBE-Eduwatch" (2022). Available at <https://thebftonline.com/2022/11/22/over-1-2m-children-still-not-in-school-after-17-years-of-fcube-eduwatch/>.

²⁴⁹ *Ibid.*

²⁵⁰ Joseph Agbenyega, "Examining Teachers' Concerns and Attitudes to Inclusive Education in Ghana" (2007) 3:1 Intl J Whole Schooling. 41 at 42-43.

²⁵¹ Bako, *supra* note 248.

²⁵² Augustina Naami & Kingsley S. Mort, "Inclusive Education in Ghana: How Prepared are the Teachers?" (2023) 8 Frontiers in Education. 1 at 2. Online: <https://www.frontiersin.org/journals/education/articles/10.3389/feduc.2023.1056630/full>.

education for all.²⁵³ Then, in 2006, the *Persons with Disabilities Act of Ghana, 2006* (Act 715)²⁵⁴ was introduced to improve the lives of persons with disabilities and promote their full integration into society. Act 715 was passed into law after a long struggle by the Ghana Federation of the Disabled (GFD) and a few other civil society organizations to push the government of Ghana to enact a law to enforce Article 29 of the 1992 Constitution.²⁵⁵ Article 29 of the 1992 Constitution is titled “Rights of Disabled Persons.”²⁵⁶ It guarantees persons with disabilities an array of rights, including the right to live with their families, the right to participate in social, creative, or recreational activities, and protection against exploitation and all treatment of a discriminatory, abusive or degrading nature.²⁵⁷ Article 29(8) of the 1992 Constitution further provides that “Parliament shall enact such laws as are necessary to ensure the enforcement of the provisions of this article.”²⁵⁸ Lastly, article 33 of the 1992 Constitution states that where any human rights contained in it is being violated, redress may be sought in the High Court.²⁵⁹

In 2012, Ghana further affirmed its commitment to advancing the rights of persons with disabilities, including in particular the right to inclusive education, by ratifying the CRPD.²⁶⁰ In 2015, Ghana appeared to take this right a step further in developing an inclusive education policy.²⁶¹ These steps were also made to work towards achieving the ESP 2003-2015 goal of

²⁵³ In 1990, the World Education Conference was held in Thailand. Out of it was a vision to attain education for all by providing basic educational needs for both young and old. In 2002, in Dakar, an assessment was made on the over ten-decade initiative of education for all. Out of it were six goals for all member states of UNESCO to follow to achieve education for all. See; Government of Ghana, *National Action Plan Education for All: Ghana (2003-2015)*, (2003) at 4-5. Available at https://planipolis.iiep.unesco.org/sites/default/files/ressources/ghana_efa_nap_finalised_version.pdf.

²⁵⁴ Act 715, *supra* note 3.

²⁵⁵ Lewis Abedi Asante & Alexander Sasu, “The Persons with Disability Act, 2006 (Act 715) of the Republic of Ghana: The Law, Omissions and Recommendations” (2015) 36 J. L Policy & Globalization. 62 at 62.

²⁵⁶ 1992 Constitution, *supra* note 13 at art 29.

²⁵⁷ *Ibid*.

²⁵⁸ *Ibid* at art 29(8.)

²⁵⁹ *Ibid* at art 33.

²⁶⁰ Kniel, *supra* note 214.

²⁶¹ UNICEF Ghana, “Inclusive Education Policy” (2015). 1 at 3. Online: <https://www.unicef.org/ghana/media/1351/file/UN257287.pdf>.

providing education for all. The 2015 policy outlined the government’s approach to educating children with special educational needs.²⁶² These steps taken by Ghana were intended to fully implement the objectives of the 1992 Constitution²⁶³ and the *Education Act, 2008* (Act 778)²⁶⁴ regarding the inclusive education rights of persons with disabilities. By implication, these were also efforts to meet Ghana’s obligations under the CRPD. I return to the legislation and policies mentioned later in this chapter.

In short, Ghana’s commitment to providing education to all its citizens, regardless of their physical or mental abilities, has been shaped by various international laws, treaties, regulations, and conventions. As noted, Ghana is a member of the United Nations and has signed and ratified the CRPD and expressed its support for the SDGs.²⁶⁵ These international mechanisms have influenced Ghana’s special education policies on working towards providing education for persons with disabilities.²⁶⁶ As a member of the United Nations, Ghana has also committed to achieving the 17 SDGs, including promoting the empowerment and inclusion of persons with disabilities in education. SDG 4 calls for “inclusive and quality education for all.”²⁶⁷

But notwithstanding the international and domestic laws and policies to which Ghana has committed, students with disabilities in Ghana are at a higher risk of being excluded from education than their peers due to the unavailability of resources to support them.²⁶⁸ There are still barriers preventing inclusive education from progressing in Ghana despite attempts to implement

²⁶² *Ibid* at viii.

²⁶³ 1992 Constitution, *supra* note 13.

²⁶⁴ Ghana Education Act, 2008 (Act 778). GHA-2008-L-83622. [Act 778].

²⁶⁵ United Nations, “The 17 Goals.” <https://sdgs.un.org/goals>; See SDGs, *supra* note 92.

²⁶⁶ Betsy Heard Botts & Nana Akua Owusu, “The State of Inclusive Education in Ghana, West Africa: Preventing School Failure: Alternative Education for Children and Youth” (2013) 57:3 Taylor & Francis Online. 135-143. Available at <https://doi.org/10.1080/1045988X.2013.798776>.

²⁶⁷ SDGs, *supra* note 92.

²⁶⁸ UNESCO Institute of Statistics, “Education and Disability: Analysis of Data from 49 Countries.” (2018). Information Paper N. 49 at 49. Online: <https://uis.unesco.org/sites/default/files/documents/ip49-education-disability-2018-en.pdf>.

pilot programs.²⁶⁹ Avoke argues that “while trends are shifting toward more inclusive approaches, the institutionalization of people with learning disabilities and other disabilities continues to be a common practice in Ghana.”²⁷⁰ Further, it continues to be a common practice for students with disabilities to be placed in separate schools from those attended by students without disabilities.²⁷¹ This is done because it is deemed to be in the interest of students with disabilities.²⁷² The question is whether this is consistent with Ghana’s domestic laws and policies described above, and moreover with its commitments to implement the CRPD and SDGs.

2.3 Inclusive Education: What Does It Mean to Ghana?

Inclusive education is “an international ambition every state seeks to implement in its educational system.”²⁷³ As noted, Ghana has expressed its dedication to advancing inclusive education for people with disabilities. In some ways, the country has made progress in recognizing these rights, particularly the right to education. For instance, Ghana is one of the few African countries with dedicated legislation on disability rights.²⁷⁴ The primary law in question is Act 715. Further the government has long acknowledged its responsibility for educating individuals with disabilities, as outlined in Act 87,²⁷⁵ which mandates the provision of free and compulsory education for all school-age children.²⁷⁶ Beyond this, Ghana’s education system stakeholders have

²⁶⁹ Ametepee, *supra* note 216 at 150.

²⁷⁰ Mawutor Avoke, “Some Historical Perspectives in the Development of Special Education in Ghana” (2001) 16:1 *Eur J Special Needs Education*. 29 at 29.

²⁷¹ Bente Lilljan Lind Kassah, Alexander Kwesi Kassah, & Deborah Phillips, “Children with Intellectual Disabilities and Special School Education in Ghana” (2017) 65:3 *Intl J Disability, Development & Education*. 341 at 342. Online: <https://doi.org/10.1080/1034912X.2017.1374358>.

²⁷² Avoke, *supra* note 270 at 31.

²⁷³ Laadi Salifu, “Inclusive Education in Ghana: Challenges and Lessons from Canada” (LLM Thesis, Brock University Faculty of Social Science, 2024) [unpublished] at 14. Available at https://dr.library.brocku.ca/bitstream/handle/10464/18824/Brock_Salifu_Laadi_2024.pdf?sequence=1&isAllowed=y.

²⁷⁴ Abedi & Sasu, *supra* note 255 at 62.

²⁷⁵ Act 87, *supra* note 244.

²⁷⁶ Anthony, *supra* note 247.

worked together to create inclusive education policies.²⁷⁷ As described above, in 2015, an Inclusive Education Policy (IE) was adopted by the Ghana Education Service to achieve the educational objectives outlined in the 1992 Constitution,²⁷⁸ which recognizes education as a fundamental human entitlement.²⁷⁹ The policy also draws inspiration from Ghana’s National Development Agenda, Education Strategic Plans, and related international commitments.²⁸⁰

The IE policy defines inclusion in “its broadest sense as ensuring access and learning for all children: especially those disadvantaged from linguistic, ethnic, gender, geographic or religious minority, from an economically impoverished background as well as children with special needs including those with disabilities.”²⁸¹ Section 5(4) of the *Ghana Education Act, 2008* (Act 778)²⁸² draws on the 1992 Constitution²⁸³ and Act 715²⁸⁴ to define inclusive education as “the value system which holds that all persons who attend an educational institution are entitled to equal access to learning, achievement and the pursuit of excellence in all aspects of their education, and which transcends the idea of physical location but incorporates the basic values that promote participation, friendship and interaction.”²⁸⁵ Notably, this provision does not clearly guarantee inclusion across all institutions but only within specific institutions.

Additionally, the Ghana Education Strategic Plan (ESP) 2010-2020²⁸⁶ defines inclusive education as “an approach in which schools are structured to accommodate children with

²⁷⁷ Gomda, *supra* note 213.

²⁷⁸ 1992 Constitution, *supra* note 13.

²⁷⁹ Gomda, *supra* note 213.

²⁸⁰ Ametepee, *supra* note 216 at viii.

²⁸¹ *Ibid* at 2.

²⁸² Act 778, *supra* note 264.

²⁸³ 1992 Constitution, *supra* note 13.

²⁸⁴ Act 715, *supra* note 3.

²⁸⁵ Act 778, *supra* note 264 at s 5(4).

²⁸⁶ The Education Strategic Plan 2010 – 2020 was made to spell out the government’s strategies for the education sector over the next decade after its implementation. [ESP]. Online; <https://www.globalpartnership.org/sites/default/files/2013-Ghana-Education-Strategic-Plan-2010-2020-%20Vol.%201.pdf>.

disabilities and other disadvantaged children in order to improve their right to equal education, inclusion, and participation in other societal affairs.”²⁸⁷

In Ghana, the concept of inclusion entails the involvement of individuals in social life regardless of their age, language, gender, ethnicity, and disability.²⁸⁸ The same concept applies or should apply to inclusive education. All persons, with or without disabilities, are to have equal access to education and all educational facilities.²⁸⁹ The 2015 Inclusive Education Policy states that inclusive education is more than just having equal access to educational facilities. It further explains that inclusion must extend to communities where students live to ensure that they are accepted, supported, and given the opportunity to reach their full potential.²⁹⁰ It also involves promoting values such as friendship, participation, and interaction.²⁹¹ Through frequent education and awareness campaigns, communities can be educated on IE policies and topics such as disability, the importance of educating students with disabilities, and accepting all forms of abilities, as well as, share opinions on how to improve on such policies. In his book, Awini adds that inclusive education involves “making changes and modifications in content, approaches, structures and strategies to enable all children, including persons with disabilities, to be educated.”²⁹²

As noted above, the 2015 IE policy adapts the definition of disability used in Act 715 and recognizes different types of disability.²⁹³ These include intellectual disability, physical disability, persons with health impairment and chronic diseases, persons with speech and communication

²⁸⁷ Avoke, *supra* note 270.

²⁸⁸ Naami & Mort, *supra* note 252 at 3.

²⁸⁹ *Ibid.*

²⁹⁰ UNICEF Ghana, *supra* note 261 at 2.

²⁹¹ *Ibid.*

²⁹² Awini, *supra* note 226 at 124.

²⁹³ UNICEF Ghana, *supra* note 261 at 21.

disorders, and persons with emotional and behaviour disorders, to name a few.²⁹⁴ To achieve inclusive education for students with disabilities, the IE policy requires both special²⁹⁵ and regular schools to collaborate to provide inclusive learning environments for students with special needs.²⁹⁶ However, where it is proven through assessment that putting a student with a disability in a regular classroom will not be beneficial, the policy states such a student shall be placed in a special classroom within a regular school after taking all the reasonable measures to accommodate such a student.²⁹⁷ This can only be assessed by the Ministry of Education and the Ministry of Health and Social Welfare.²⁹⁸ Ghana aims to adjust the IE policy every five years to align with changing global development trends, national goals, and objectives regarding inclusive education.²⁹⁹ To achieve its goal, the IE policy provides a checklist for schools to identify existing barriers to inclusive education, act upon these barriers, and adopt measures to help eliminate them.³⁰⁰

Ghana faces challenges in adopting and implementing inclusive education policies in the State. Komabu-Pomeyie states that the IE policy has not met expectations, leaving many children with disabilities without access to education.³⁰¹

²⁹⁴ *Ibid* at 2.

²⁹⁵ UNESCO defines special education as “classes or instruction designed for students categorized as having special educational needs.” It further describes special educational needs as “a term used in some countries to refer to children with impairments that are seen as requiring additional support. Source: UNESCO, “A Guide for Ensuring Inclusion and Equity” (2017). Online; <https://unesdoc.unesco.org/ark:/48223/pf0000248254/PDF/248254eng.pdf.multi>; GSS defines special education schools as “a school that caters for students who have special educational needs due to learning difficulties, physical disabilities, or behavioural problems.” See Universal Periodic Review, *infra* note 361.

²⁹⁶ UNICEF Ghana, *supra* note 261 at 12.

²⁹⁷ *Ibid*. This poses the debatable question of whether separating students with disabilities in a different classroom is segregation or inclusive education, as remarked by Professor Pothier in her book *Critical Disability Theory: Essays in Philosophy, Politics, Policy, and Law* (co-edited with Professor Devlin) with reference to the case of *Eaton v Brant County Board of Education*, which will be discussed later in this paper.

²⁹⁸ Act 715, *supra* note 3 at s 20(1).

²⁹⁹ UNICEF Ghana, *supra* note 261 at viii.

³⁰⁰ *Ibid* at 28-29.

³⁰¹ Sefakor GA Komabu-Pomeyie, *The Challenges of Inclusive Education Policy Implementation in Ghana: Stakeholders’ Perspectives* (PhD Thesis, University of Vermont Educational Leadership and Policy Studies, 2020) at 69.

2.4 Challenges and Barriers Faced by Persons with Disabilities in the Education System in Ghana

Disability can make a person vulnerable in various ways. Therefore, it is important to understand the challenges persons with disabilities face before attempting to provide tailor-made interventions.³⁰² The first step towards social exclusion and marginalization of children with disabilities is to refuse them access to education.³⁰³ Due to perceived inability, children with disabilities may be denied an education and, hence, access to careers later in life.³⁰⁴ Barriers beyond those relating to disability may come into play as well. That is, students with disabilities often face a range of overlapping obstacles to their education, including coming from a low-income home, being female, or having a particular medical condition.³⁰⁵

One of the barriers persons with disabilities face in education is the unavailability of assistive devices and technologies like Braille, sign language interpretation, captions, audio provision, and graphics. Others include inaccessible school buildings, inaccessible transportation, stigmatization, and discriminatory prejudice.³⁰⁶ Unwillingness to see beyond a child's or youth's disability is another related factor that stops heads of schools from accepting persons with disabilities into their institutions.³⁰⁷ All these factors may cause physical, emotional, psychological, and mental health problems for persons with disabilities.³⁰⁸

Further, the curriculum and auxiliary teaching materials do not adequately address persons with disabilities and their needs.³⁰⁹ Relatedly, teachers or supervisors of persons with disabilities

³⁰² UNICEF Ghana, *supra* note 261 at 10.

³⁰³ Gomda, *supra* note 213 at 2.

³⁰⁴ *Ibid.*

³⁰⁵ Wapling, *supra* note 125 at 18.

³⁰⁶ Charlotte McClain-Nhlapo, "Disability Inclusion" (2023). Online: <https://www.worldbank.org/en/topic/disability>

³⁰⁷ Naami & Mort, *supra* note 252 at 5.

³⁰⁸ *Ibid.*

³⁰⁹ *Ibid.*

often have not had the chance to reflect on their attitudes, values, prejudices, and perceptions of people with disabilities and the need to help them navigate the school system.³¹⁰

Name-calling is a further significant challenge that people with disabilities, especially children, face in school. In their article, Awini et al. report that during interviews with students with disabilities, they mentioned that their peers often refer to them by their disabilities.³¹¹ This behaviour violates Article 37 of Act 715 of Ghana, which states that “a person shall not call a person with disability derogatory names because of the disability of the person.”³¹² Awini et al. observe that name-calling affects the dignity of persons with disabilities and would result in low self-esteem and low self-concept.³¹³

Other students with disabilities complain that facilities in the various schools are not accessible to them.³¹⁴ Examples include classrooms, libraries, bathrooms, and dormitories. How does a physically challenged person go to a classroom in a multi-story building without accessible pathways or bathrooms? Students with disabilities sometimes rely on their colleagues to move around in school, while others “take their fate into their own hands and move around alone.”³¹⁵ This sometimes results in them receiving injuries. For instance, Awini et al. remark on a case of a disabled student falling into an open drain.³¹⁶

Where students with disabilities face challenges including transportation to and from school, limited or no infrastructure, and unfavourable learning environments, this can result in high rates of irregular attendance, lengthy absenteeism, and dropping out.³¹⁷

³¹⁰ *Ibid.*

³¹¹ Awini, *supra* note 226 at 130.

³¹² Act 715, *supra* note 3 at art 37.

³¹³ Awini, *supra* note 226 at 130.

³¹⁴ *Ibid* at 129.

³¹⁵ *Ibid.*

³¹⁶ *Ibid.*

³¹⁷ UNICEF Ghana, *supra* note 261.

Cultural barriers are, moreover, a further obstacle to the education of persons with disabilities, especially children. Unfortunately, in Ghana, as noted above, there are still people who believe that disabilities are linked to spirituality or evil spirits.³¹⁸ Some people view disability as a curse or punishment for a sin committed by the family.³¹⁹ These false beliefs lead to people shunning persons with disabilities and their families. Parents of children without disabilities sometimes threaten to remove their children from schools if they are placed in classes with disabled children.³²⁰ Some teachers also pay less attention to students with disabilities in their class due to this same widespread belief that disability is related to evil forces.³²¹

Another challenge is that the laws protecting persons with disabilities are sometimes not enforced. The weak enforcement of laws means individuals with disabilities must often rely on the discretion of officials when seeking legal remedies rather than receiving vindication of their rights based on the law.³²² In some instances, persons with disabilities face pressures to engage in corrupt practices and make unauthorized payments to people in authority when they want to advocate for their rights. This can occur at various levels, including within the justice system.³²³ Not complying can lead to delays or a denial of entitled support, making the protection intended by Act 715 ineffective.³²⁴

³¹⁸ GY Gadagbui, “Inclusive Education in Ghana: Practices, Challenges and the Future Implications for All the Stakeholders” (2010). Report of Ghana National Commission for UNESCO.

³¹⁹ *Ibid.*

³²⁰ *Ibid.*

³²¹ Cecilia Obeng, “Teacher’s Views on the Teaching of Children with Disabilities in Ghanaian Classrooms” (2007) 22:1 Intl J Special Education. 96 at 100.

³²² Joseph Ocran, “Exposing the Protected: Ghana’s Disability Laws and the Rights of Disabled People” (2019) 34:4 Disability & Society. 663 at 665. Online: <https://www.tandfonline.com/journals/cdso20>.

³²³ As cited in Ocran, *ibid.* Grischow Jeff D., “‘I Nearly Lost My Work’: Chance Encounters, Legal Empowerment and the Struggle for Disability Rights in Ghana.” (2015) 30:1. 101-13. Online: <https://www.tandfonline.com/doi/full/10.1080/09687599.2014.982786>.

³²⁴ Gadagbui, *supra* note 318.

Finally, because of widespread stigmatization, persons with disabilities sometimes internalize their oppression and begin to feel unworthy and less deserving of the benefits they are entitled to.³²⁵ The government shares responsibility for this due to its inconsistent efforts in raising awareness and educating the public about the importance of disability inclusion.³²⁶

2.5 Legal Framework on Inclusive Education of Persons with Disabilities in Ghana

Having introduced the social and legal context for inclusive education in Ghana, I will now examine the most relevant laws. Ghana's legislation promoting inclusive education includes the 1992 Constitution,³²⁷ Act 715,³²⁸ Act 778,³²⁹ the *Children's Act of Ghana, 1998*,³³⁰ and more. This paper will discuss only the three most relevant regimes: the 1992 Constitution,³³¹ Act 715,³³² and Act 778.³³³ These three laws were selected because they contain provisions that specifically address inclusive education and the right of persons with disabilities to education.

2.5.1. The 1992 Constitution of Ghana (the Constitution)

Ghana stands out as a leading example of an emerging democracy in Africa.³³⁴ Ghana's long-standing commitment to human rights is intricately tied to the 1992 Constitution,³³⁵ which

³²⁵ Alison Picton, "Denying Ghana's Disabled Their Rights. The Disability Act: 5 Years On" (2011). Online: <https://www.modernghana.com/news/336064/denying-ghanas-disabled-their-rights-the-disability-act.html>.

³²⁶ Ocran, *supra* note 322 at 666.

³²⁷ 1992 Constitution, *supra* note 13.

³²⁸ Act 715, *supra* note 3.

³²⁹ Act 778, *supra* note 264.

³³⁰ Children's Act of Ghana, 1998. [Act 560].

³³¹ 1992 Constitution, *supra* note 13.

³³² Act 715, *supra* note 3.

³³³ Act 778, *supra* note 264.

³³⁴ USAID, *Ghana Democracy and Governance Assessment Report*, (2011) at 11. The Report also cites a ranking by an organization called Freedom House, which ranks Ghana as "1 out of 7 on Political Rights (with 1 being the best) and 2 out of 7 on Civil Liberties."

³³⁵ 1992 Constitution, *supra* note 13.

marked the end of almost three decades of military rule.³³⁶ Understanding the country's current human rights record requires consideration of this constitutional framework.

Article 1(2) of the Constitution provides that the Constitution is the supreme law to which all other laws in Ghana must conform.³³⁷ The Constitution guarantees the human rights of its citizens. The human rights provisions can be seen under Chapter V (articles 12-33), titled 'Fundamental Human Rights and Freedoms' and Chapter VI (articles 34-41), titled 'Directive Principles of State Policy.'³³⁸ Chapter 5 of the Constitution details all Ghanaians' rights and freedoms in a section running from articles 12 to 33. Article 12 provides that "the fundamental human rights and freedoms enshrined in this chapter shall be respected...by all natural and legal persons in Ghana...and every person in Ghana...shall be entitled to the fundamental human rights and freedoms of the individual contained in this Chapter but subject to respect for the rights and freedoms of others and the public interest."³³⁹ Of special relevance to this thesis is Article 25(1), which provides that "*all persons shall have the right to equal educational opportunities and facilities and with a view to achieving the full realization of that right.*"³⁴⁰ The same article says that basic, secondary, and higher education shall be made generally available and equally accessible to all.³⁴¹

Also of key relevance, Article 28(4) of the 1992 Constitution provides that no child shall be deprived by any other person of his education merely based on the person's religious or other

³³⁶ Constitution Review Commission, *From a Political to a Developmental Constitution: A Report of the Constitutional Review Commission of Ghana*, (Ghana; Constitution Review Commission, 2011) at 84; See also E Gyimah-Boadi, "Confronting the Legacy of Human Rights Abuse in Africa: Lessons from Ghana" (2004) 4:2 Ghana Center for Democratic Development. 1 at 10.

³³⁷ 1992 Constitution, *supra* note 13 at art 1(2).

³³⁸ *Ibid.*

³³⁹ *Ibid* at art 12.

³⁴⁰ *Ibid* at art 25(1).

³⁴¹ *Ibid.*

beliefs.³⁴² As noted above, sadly, some people in Ghana still believe that disability is associated with spirituality – and the right in question appears to lack enforcement. Further, Article 29 is titled the “Rights of Disabled Persons.”³⁴³ Although this article describes some rights persons with disabilities are entitled to, it does not specifically mention education. It explains further that Parliament must “enact such laws as are necessary to ensure the enforcement of the provisions of this article.”³⁴⁴ The 1992 Constitution explicitly requires the parliament of Ghana to pass laws to uphold and advance the rights of persons with disabilities, however, this duty was not fulfilled for several reasons until fourteen years later when the *Persons with Disability Act of Ghana, 2006*³⁴⁵ was passed in 2006. Act 715 will be discussed next.

2.5.2. Persons with Disabilities Act, 2006 (ACT 715)

In 2006, Ghana’s government passed legislation in order to explicitly protect persons with disabilities; this act is known as Act 715.³⁴⁶ This Act was born out of the long struggle of the Ghana Federation of the Disabled (GFD) and other civil rights organizations’ quest for the Parliament of Ghana to make legislation to enforce Article 29 of the Constitution.³⁴⁷ In Ghana’s human rights discourse, the enactment of Act 715 has been regarded as a significant turning point, as it offers hope for improving the lives of persons with disabilities and their integration into society.³⁴⁸ Persons with disabilities in Ghana at the time were seen by some observers as the fortunate few, as most African countries had no separate legislation on the rights and interests of persons with disabilities.³⁴⁹

³⁴² *Ibid* at art 28(4).

³⁴³ *Ibid* at art 29.

³⁴⁴ *Ibid*.

³⁴⁵ Act 715, *supra* note 3.

³⁴⁶ *Ibid* at 1.

³⁴⁷ Abedi & Sasu, *supra* note 255 at 62.

³⁴⁸ *Ibid*.

³⁴⁹ *Ibid*.

Act 715 has various sections, but my review of the Act will centre on those dealing with education. Act 715 defines “a person with a disability” in section 59 as “an individual with a physical, mental or sensory impairment including a visual, hearing or speech functional disability which gives rise to physical, cultural or social barriers that substantially limits one or more of the major life activities of that individual.”³⁵⁰ The definition of ‘disability or a person with disability’ is important as it determines the model of disability and its intervention and implementation. Section 4 of Act 715 provides that persons with disabilities are not to be discriminated against or subjected to abusive or degrading treatment.³⁵¹ Some commentators have argued that the Act is not specific enough about what kind of discrimination is engaged or how the relevant legal doctrine should be constructed.³⁵² Brobbey JSC in a decided Ghanaian case explained article 17 of the 1992 Constitution on discrimination as follows:

For the purposes of this article, “discriminate” means to give different treatment to different persons attributable only or mainly to their respective descriptions by race, place of origin, political opinions, colour, gender, occupation, religion, or creed, whereby persons of one description are subjected to disabilities or restrictions to which persons of another description are not made subject or are granted privileges or advantages which are not granted to persons of another description.³⁵³

In *Rita Kriba v. Africa World Airlines*, the High Court stated that “interpreters of Ghanaian law are to interpret the laws in a manner that advances or protects human rights, as well as promote the creative development of the law, which in turn promotes the development of the country.”³⁵⁴ The Court stated that the High Court is the proper forum to address human rights violations, including discrimination against persons with disabilities.³⁵⁵

³⁵⁰ Act 715, *supra* note 3 at s 59.

³⁵¹ *Ibid* at s 4.

³⁵² Abedi & Sasu, *supra* note 255 at 64.

³⁵³ Ghana Commercial Bank Ltd vrs The Commissioner, CHRAJ [2016] Civil Appeal No. 11/2002, 29th January, 2003; See also Dr. Festus Nii Boye Boye vrs Ghana Ports & Harbours Authority. SUIT NO. INDL/53/13 at 11.

³⁵⁴ *Rita Kriba v Africa World Airlines* [2023] GHACA 19 at 21. Online: <https://ghalii.org/akn/gh-hr-accra/judgment/ghaca/2023/19/eng@2023-03-02>.

³⁵⁵ *Ibid*; Also see 1992 Constitution, *supra* note 13 at art 33.

Again, section 16 of Act 715 provides that a parent, guardian, or custodian of a child with a disability who is of school-going age has an obligation to ensure that the child is enrolled in a school.³⁵⁶ Subsection 2 of section 16 provides further that any parent, custodian, or guardian who denies a child with a disability such right commits an offence and is liable on summary conviction to a fine not exceeding ten penalty units or a term of imprisonment not exceeding fourteen days.³⁵⁷ The monetary value of one penalty unit in Ghana is 12 cedis.³⁵⁸ This puts an obligation on a parent or guardian of a person with a disability to educate their ward or face incarceration. Are schools in Ghana available to accommodate children with disabilities, are they prepared to welcome these children, and are there enough resources to support students with disabilities in exercising their right to education? These are some crucial questions that the courts should consider when given punishment for such offences. Although Act 715 includes an offence for parents who refuse to send their child with a disability to school, it does not provide an accessible administrative platform for parents to address situations where a child is denied admission or faces discrimination. For now, the High Court is the proper forum for addressing human rights violations.³⁵⁹

Section 17 of Act 715 states that “the Minister of Education shall, by Legislative Instrument, designate schools in each region of Ghana that shall provide the necessary facilities and equipment for persons with disabilities to fully benefit from the school.”³⁶⁰ The Act stipulated

³⁵⁶ Act 715, *supra* note 3 at s 16.

³⁵⁷ *Ibid.*

³⁵⁸ Ghana Revenue Authority, “Tax Offences and Penalties.” Online: <https://gra.gov.gh/domestic-tax/tax-offences-and-penalties/#:~:text=Tax%20Offences%20and%20their%20related%20Penalties%20include%3A&text=A%20person%20would%20pay%20500,day%20that%20the%20failure%20continues.&text=The%20Commissioner%2D%20General%20may%2C%20in,person%20to%20submit%20the%20return.>

³⁵⁹ Article 33(1) of the 1992 Constitution states that “where a person alleges that a provision of this Constitution on the fundamental human rights and freedoms has been or is being or is likely to be contravened in relation to him, then, without prejudice to any other action that is lawfully available, that person may apply to the High Court for redress.” See the 1992 Constitution, *supra* note 13 at art 33(1).

³⁶⁰ Act 715, *supra* note 3 at s 17.

a 10-year deadline for all public buildings, including schools, to become accessible to persons with disabilities.³⁶¹ However, many years have passed, and not all schools have been made fully accessible to accommodate them.³⁶² Further, there is lack of “special schools” in the various regions in Ghana -- a problem that must be assessed in light of the further problem of relying on these schools in the first place. Section 18 provides that the government of Ghana shall provide education and establish special schools for persons with disabilities who, due to their disability, cannot be enrolled in formal schools.³⁶³ The northern regions of Ghana have the highest number of children with disabilities, yet most of the special schools are located in the south.³⁶⁴ According to the GSS reports, three out of the five regions without special education needs are in the north.³⁶⁵ For parents or guardians to exercise their obligation under section 16 of Act 715, the government of Ghana must first establish schools and provide the necessary facilities and equipment to aid persons with disabilities in enjoying their right to education. Section 19 provides that if, for any reason, a person with disabilities is not able to further their education after completing basic education, the Ministry of Education shall provide appropriate training for such a person.³⁶⁶ Thus, where persons with disabilities cannot access the regular education system, the government must provide appropriate training for them.

Section 20 prohibits individuals responsible for school admissions from denying admission to a person with a disability solely because of their disability unless the Ministry of Education and Ministry of Health and Social Welfare have evaluated the person and determined that they require

³⁶¹ Universal Periodic Review, “Rights of Persons with Disabilities,” 2017. Online: https://upr-info.org/sites/default/files/documents/2017-09/disability_factsheet.pdf; See also Ishaq, *infra* note 372.

³⁶² *Ibid*.

³⁶³ Act 715, *supra* note 3 at s 18.

³⁶⁴ Ghana Statistical Service, “School Resources and Children with Special Education Needs” 2023. 1 at 9. Available from https://www.statsghana.gov.gh/gssmain/fileUpload/pressrelease/CHILDREN_WITH_SPECIAL_EDUCATION_NEEDS_Formatted_Jenny_20.11.23_1502.pdf.

³⁶⁵ *Ibid* at 6.

³⁶⁶ *Ibid* at s 19.

placement in a special school.³⁶⁷ The National Assessment and Resource Center, a unit under the Special Education Division of the Ministry of Education, is responsible for this screening.³⁶⁸ The staff of the Center includes teachers, nurses, physiotherapists, occupational therapists, social workers and psychologists.³⁶⁹ The Center helps to identify and detect disabilities at an early age, as well as special needs for students.³⁷⁰ First, the Center conducts a comprehensive assessment of children who have, or are suspected to have, a disability and then categorizes them based on those who need further examination to determine who requires special education needs.³⁷¹ This process helps prepare families, healthcare professionals, and education professionals to understand and provide necessary support for the development, inclusion, and active participation of children with disabilities.³⁷² Section 20(2) adds that any person who contravenes section 20 “commits an offence and is liable, on summary conviction, to a fine not exceeding fifty penalty units or imprisonment for a term not exceeding three months or both.”³⁷³ In other words, the head of school or anybody else in charge of admission is prohibited under Act 715 from denying a person with disability admission merely because of his or her disability. The question remains whether those schools have been equipped to support disabled students.

³⁶⁷ *Ibid* at s 20.

³⁶⁸ Ghana Education Service, “Special Education Division (SPED).” Online: <https://ges.gov.gh/special-education-division/>. SPED is a division under the Ghana Education Service (which is part of the Ministry of Education). It is responsible for “the management of Special and units schools and has the mandate of promoting the Inclusive Education policy in tangent with the SDG Goal #4 which seeks to bring all categories of learners (those with and those without disabilities) under one umbrella of a safe and conducive teaching and learning environment.”

³⁶⁹ Ambrose Agbetorwoka, “Accessibility of Assessment Centres for Children with Special Educational Needs in Ghana” (2021) 8:7 Intl J Multidisciplinary Research & Development. 148 at 148 Online: <https://www.allsubjectjournal.com/assets/archives/2021/vol8issue7/8-7-18-877.pdf>.

³⁷⁰ *Ibid*.

³⁷¹ *Ibid* at 149.

³⁷² *Ibid*.

³⁷³ Act 715, *supra* note 3 at s 20.

Beyond the question of accessible buildings (and it is clear that not all public buildings are as yet accessible in Ghana),³⁷⁴ section 21 provides that by Legislative Instrument, the Ministry of Education shall establish public technical, vocational, and teacher training institutions in all regions, which will include training regarding special education like sign language and Braille writing and reading in their curricula.³⁷⁵ This is intended to ensure that students with disabilities are able to benefit from inclusive education and that regular schools have capacity to support those students.³⁷⁶ Lastly, section 22 provides that public libraries are to be made in a way that will be accessible to persons with disabilities – an important supplement to the requirement of accessible schools.³⁷⁷

2.5.3. The Education Act, 2008 (ACT 778)

Act 778 was established under Article 190 of the 1992 Constitution.³⁷⁸ Article 190(1)(a) of the 1992 Constitution includes the education service as a public service in Ghana.³⁷⁹ Article 190(3)(b) further states that “Subject to the provisions of the Constitution, an Act of Parliament enacted by virtue of clause (1) of this article shall provide for the functions of that service.”³⁸⁰ The education service’s functions under Act 778 will now be discussed.

Section 5 of Act 778 specifically addresses inclusive education. First, it defines inclusive education in section 5(4) as

the value system which holds that all persons who attend an educational institution are entitled to equal access to learning, achievement and the pursuit of excellence in all aspects of their education; and which transcends the idea of physical location but incorporates the basic values that promote participation, friendship, and interaction.³⁸¹

³⁷⁴ S Ishaq, “Accessibility to Public Buildings in Ghana” 2024. Available at <https://medium.com/@ishaaq/accessibility-to-public-buildings-in-ghana-b3a2a750c9c6>.

³⁷⁵ Act 715, *supra* note 3 at s 21.

³⁷⁶ *Ibid*.

³⁷⁷ *Ibid* at s 22.

³⁷⁸ 1992 Constitution, *supra* note 13 at art 190.

³⁷⁹ *Ibid* at art 190(1)(a).

³⁸⁰ *Ibid* at art 190(3)(b).

³⁸¹ Act 778, *supra* note 264 at s 5(4).

Section 5(1) of Act 778 states: “The District Assemblies and heads of institutions shall ensure that designs for schools are user-friendly for children with special needs.”³⁸² This provision mandates that the heads of institutions ensure that their schools are accessible. The same mandate applies to the District Assemblies; they are to ensure that the schools in their localities are accessible for all students, most especially those with special needs.³⁸³ Section 5(2) states that existing institutions providing education for children with special needs should be enhanced, and additional facilities should be provided where necessary.³⁸⁴ This section of Act 778 contemplates segregated schools. According to sections 5(1) and 5(2) of Act 778, all current and future schools, including special schools, must be designed to accommodate students, including those with special needs. The 1992 Constitution in article 252 creates the District Assemblies Common Fund to transfer financial resources from the central government to local governments.³⁸⁵ This common fund is to work towards improving facilities and provide the resources needed to work towards the providing inclusive education for all students.

After the passage of Act 715 in 2006, students with disabilities were finally allowed to attend regular schools.³⁸⁶ However, most regular schools in Ghana were constructed before 2006. Prior to the passage of Act 715, students with disabilities only attended special schools and were not seen in regular schools as they were not accessible to them even if they were granted admission. Section 5(2) of Act 778 mandates that any institution with students with special needs upgrade its buildings and, if possible, provide additional buildings to accommodate these

³⁸² *Ibid* at s 5(1).

³⁸³ *Ibid*.

³⁸⁴ *Ibid* at s 5(2).

³⁸⁵ 1992 Constitution, *supra* note 13 at art 252; See art 1 of the District Assembly Common Funds of Ghana, 1993 (Act 455).

³⁸⁶ Abedi & Sasu, *supra* note 255 at 1.

students.³⁸⁷ Similar to section 16(2) of Act 715, section 5(3) provides that parents or guardians of children with disabilities must take advantage of inclusive education facilities by sending their child to school or request appropriate educational services if resources are available.³⁸⁸ As important as it is for the government to promote inclusive education for persons with disabilities, it should also be a concern for parents or guardians to enroll their wards in school. Section 2(2) of Act 778 provides that education is free and compulsory at the basic level.³⁸⁹ Therefore, a parent who does not ensure that their child goes to school shall “appear before the social welfare committee of the district assembly for the appropriate action.”³⁹⁰ It continues to state that a parent commits an offence if he does not comply with the appropriate action and will be liable “for a first-time offence; to a fine of one penalty unit in respect of each day during which the offence continues or in lieu of the payment of the fine, to a community service as determined by the Court in consultation with the social welfare committee.”³⁹¹ Section 6 states that the District Assembly may step in to provide education for a child whose parents genuinely cannot afford to pay for his education.³⁹² As with section 16 of Act 715, the question is, are these schools in the districts accessible, and are they accepting and accommodating children with special needs?

2.6 Movements for Reform of Act 715 and Act 778

It is to be noted that Act 715, as mentioned earlier, was in force before Ghana adopted the CRPD. This means the CRPD provisions were not captured in the Constitution or Act 715.³⁹³ As

³⁸⁷ Act 778, *supra* note 264 at s 5(2).

³⁸⁸ *Ibid* at s 5(3).

³⁸⁹ *Ibid* at s 2(2).

³⁹⁰ *Ibid* at s 2(4)

³⁹¹ *Ibid* at s 2(5).

³⁹² *Ibid* at s 6.

³⁹³ Article 11(1) of the 1992 Constitution provides the sources of Ghanaian law as follows; “the Constitution; enactments made by or under the authority of the Parliament established by the Constitution; any Orders, Rules and Regulations made by any person or authority under a power conferred by the Constitution; existing laws; and the

such, there is a pressing need for further improvements to ensure comprehensive protection and promotion of the rights of persons with disabilities in Ghana, consistent with the CRPD. In 2020, a bill was proposed to amend Act 715, eight years after Ghana ratified the CRPD. That year, the National Council on Persons with Disability (UCPD)³⁹⁴ sent a proposed bill, titled the *Persons with Disability Amendment Bill, 2020*, to Parliament. An attached Memorandum provides that the proposed bill is intended “to domesticate and bring into effect the CRPD into Ghana’s legal framework and to domesticate the sustainable development goals.”³⁹⁵ Key features of the proposed amendments include the establishment of a disability fund, access to public places and services, access to information, communication and technology services, appropriate training for unemployed persons with disabilities, education of children with multiple disabilities, free inclusive education and special schools, and assessment centres for children with disabilities through adulthood.³⁹⁶ Section 20 of the proposed bill endorses inclusive education and further provides that the Ministry of Education shall implement this in all districts in Ghana to accommodate students with disabilities fully.³⁹⁷ Yet, in some tension with this is section 21(2)

common law.” The Constitution does not explicitly mention international laws as a source of law in Ghana. In *ARA Libertad Arbitration (Argentina v. Ghana)*, the Supreme Court of Ghana stated that customary international laws are directly part of Ghana’s laws through the Common Law, “subject to not being in contravention of any domestic laws or court decisions.” The Court further stated that international laws have to be ratified and incorporated through legislation into the domestic laws of the State before they can have effect. Source: Julia S. Ayetey & Bolanle Erinsho, “International Law in Ghana: A Study of the Attitudes, Knowledge and Use of International Law by Judges and Lawyers” (2023) 31:1 *African J Int & Comparative Law* (Edinburg University Press: UK) at 258; *ARA Libertad Case, Ghana and NML Capital Limited (joining) v. Attorney General and Argentina (joining)*, Ruling, Civil Motion No. J5/10/2013, ILDC 2547 (GH 2013), (2014) 108(1) *AJIL* 73, 20th June 2013, Supreme Court, Ghana; Supreme Court (‘ARA Libertad’).

³⁹⁴ The National Council on Persons with Disability was established by the National Persons with Disability Act, 2006, Act 715. The Council is responsible for proposing and evolving policies that mainstream persons with disabilities in the national development process. See Ministry of Gender, Children and Social Protection in Ghana, “National Council for Persons with Disability (2017). Online: <https://www.mogcsp.gov.gh/national-council-for-persons-with-disabilityncpd/>. [NCPD].

³⁹⁵ National Council on Persons with Disability, “Persons with Disability Amendment Bill, 2020” (2020) 1 at 5. Online: <https://www.disabilityrightsfund.org/wp-content/uploads/Persons-with-Disabilities-Amendment-Bill-20202.pdf>.

³⁹⁶ *Ibid.*

³⁹⁷ *Ibid* at 22, see s 20.

which states, “the Government shall establish special schools for persons with disabilities who by reason of the unique accommodation needs and support cannot be enrolled in mainstream inclusive schools.”³⁹⁸ That is, even the proposed reform bill perpetuates segregated schools as a “last resort.”

It is 2024, and there is no record of whether the bill has been passed as a law. Ocran deems this inappropriate and inexcusable for a country that claims to uphold democratic and human rights.³⁹⁹ Mr. Joseph Homadzi, the national president of the Ghana Federation of Disability (GFD), called on the government to fast-track the amendment of Act 715 to conform with the standards of the CRPD during the commemoration of the 2023 International Day of Persons with Disabilities in Ghana.⁴⁰⁰ The Parliament of Ghana has introduced a new bill known as the *Persons with Disabilities Bill 2024*,⁴⁰¹ which has yet to go through the various bill readings and presidential assent.⁴⁰² The current Bill expands the definition of disability to include several forms of disabilities like psychosocial disability.⁴⁰³ Samuel Kabue, a Committee Expert on the Committee of Persons with Disabilities in Ghana, has expressed concern about passing the *Persons with Disabilities Bill* in 2024.⁴⁰⁴ He is worried that Ghana’s upcoming elections will lead to the dissolution of the current parliament, causing delays and potentially requiring the process of

³⁹⁸ *Ibid* at 23, see s 21(2).

³⁹⁹ Ocran, *supra* note 322 at 666.

⁴⁰⁰ Priscilla Ofori O., “GFD Asks Government to Expedite Passage of Amended Disability Act” Ghana News Agency (8 December 2023). Online: <https://gna.org.gh/2023/12/gfd-asks-government-to-expedite-passage-of-amended-disability-act/>.

⁴⁰¹ Persons with Disabilities Bill, 2024.

⁴⁰² United Nations, “Experts of the Committee on the Rights of Persons with Disabilities Commend Ghana on the Participation of Ghanaian Persons with Disabilities Internationally, Raise Questions on Harmful Cultural Practices and the Enactment of the Persons with Disabilities Bill,” (2024). Available online: <https://www.ohchr.org/en/news/2024/08/experts-committee-rights-persons-disabilities-commend-ghana-participation-ghanaian>.

⁴⁰³ *Ibid*.

⁴⁰⁴ *Ibid*.

passing the bill to start over again.⁴⁰⁵ Amendment of Act 715 will indirectly affect all other inclusive education legislation, especially Act 778.

2.7 Special versus Inclusive Schools: Challenges of Inclusive Education Policies and their Implementation

Beyond the question of what should be included in inclusive education law, and in particular, whether the law should permit “special schools” at all, a further key area that policymakers in Ghana need to address is how to promote the inclusion of students with disabilities in education in practice—i.e., implementation. Komabu-Pomeyie says, “The bigger challenge we have in Ghana is implementation or enforcement” because, for instance, children are still denied admission to schools because of disability.⁴⁰⁶

While everyone agrees that providing education for students with disabilities is crucial to guaranteeing equal opportunity for all individuals and promoting societal inclusion, implementing the laws and policies noted so far is a challenge in Ghana.⁴⁰⁷ As I have argued, the number of persons with disabilities in Ghana benefiting from inclusive education policies is still low.⁴⁰⁸ Even in its special schooling programming, Ghana only provides for three types of disability, which are blindness, deafness, and intellectual disability.⁴⁰⁹ That is, even the “special” school system is not inclusive, let alone the mainstream schools. Children with disabilities often have to wait several

⁴⁰⁵ *Ibid*; Art 113(1) of the 1992 Constitution states, “Parliament shall continue for four years from the date of its first sitting and shall then stand dissolved.” Ghana conducts its general election every four years. The current parliament will dissolve before the election until a new president is elected and a new set of parliamentarians are voted into power. The next election for Ghana is set for December 7th.

⁴⁰⁶ *Ibid*.

⁴⁰⁷ Gadagbui, *supra* note 318 at 312.

⁴⁰⁸ Kniel, *supra* note 214 at 149.

⁴⁰⁹ Ministry of Education, “Education Sector Performance Report” (2010). Online: <http://maps.cersgis.org/nipportal/POLICIES/phana%20MoE%20Ed%20Performance%20Report%202010.pdf>

years before even being admitted to special schools, as the average admission age for most schools is between 10 and 12 years.⁴¹⁰

Yet, Ghana is one of the countries that has benefitted from USAID's Education Quality for All (EQUALL) project to train teachers in inclusive education. Between 2004 and 2012, over 5,000 teachers, including headteachers and administrators, were trained to know more about inclusive education.⁴¹¹ Unfortunately, the project stopped running in 2010 due to lack of funds.⁴¹² Large class size is another challenge facing schools that seek to accommodate students with disabilities. As noted, there are a few special schools in Ghana and these schools tend to be overcrowded.⁴¹³ This affects the effectiveness of teaching and learning.⁴¹⁴ In March 2017, one of the radio stations in Ghana, Citi Fm, reported that there were more than 100 students on a waiting list of the Koforidua School for the Deaf.⁴¹⁵ This was due to inadequate facilities and infrastructure to accommodate these students.⁴¹⁶ Additionally, there is an absence of a legal policy document guiding the recruitment of teachers into special schools.⁴¹⁷ The majority of mainstream teachers lack the necessary training to meet the needs of students with disabilities and are not willing to seek training to that effect.⁴¹⁸ Vocational training courses that help persons with disabilities and enable them to fit in the labour market are also insufficient.⁴¹⁹ Some teachers who are not skilled

⁴¹⁰ Kniel, *supra* note 214 at 149.

⁴¹¹ Ocran, *supra* note 322.

⁴¹² *Ibid.*

⁴¹³ Samuel Frimpong Amoako, "Sixty Years of Deaf Education in Ghana (1957-2017)" (2019) 7:191 J Communication Disorders, Deaf Studies & Hearing Aids. 1 at 8. Available online: <https://www.longdom.org/open-access-pdfs/sixty-years-of-deaf-education-in-ghana-19572017.pdf>.

⁴¹⁴ *Ibid.*

⁴¹⁵ Citi Fm, "Koforidua School for the Deaf Halts Admissions Over Resource Constraints," Citi News (21 March 2017). Online: <https://citifmonline.com/2017/03/koforidua-school-for-the-deaf-halts-admissions-over-resource-constraints/>.

⁴¹⁶ *Ibid.*

⁴¹⁷ Amoako, *supra* note 413 at 8.

⁴¹⁸ Carruthers Tetteh, "Educating Persons Living with Disabilities in Ghana: Predicaments and Solutions," (2022). Online: <https://www.linkedin.com/pulse/educating-persons-living-disabilities-ghana-solutions-tetteh/>.

⁴¹⁹ Amoako, *supra* note 413 at 8.

or trained in sign language are posted to schools for children with disabilities.⁴²⁰ In his book, Amoako blames the Ministry of Education of Ghana for posting these teachers without degrees or certificates in special education.⁴²¹ In sum, even though there is legislation on non-discrimination and equality of opportunity, implementing ‘education for all’ should go beyond merely passing laws and creating policies.⁴²² It requires devoting adequate budgetary support to schools to make inclusion possible.

Although Act 715 includes provisions to protect the educational rights of students with disabilities, several requirements still need to be met. The state’s progress in establishing the essential institutions and frameworks to enforce the provisions of Act 715 has been slow.⁴²³ The law itself is, in some way, a barrier to implementation. That is, while Act 715 is intended to protect the educational rights of people with disabilities and ensure inclusive education, some specific provisions obstruct full enjoyment of this right, and some provisions are completely detached from reality as they rely on government discretion for the budgetary support required for implementation.

A key example of how the law itself is a barrier to inclusive education is section 18 (2) of Act 715, which, as noted, provides that “the government shall establish special schools for persons with disabilities who by reason of their disability cannot be enrolled in formal schools.”⁴²⁴ In short, Ghana’s current legislation adopts segregation, and this arguably contradicts the comments of the Committee on Article 24 of the CRPD on inclusive education.⁴²⁵ However, the state is working

⁴²⁰ *Ibid.*

⁴²¹ *Ibid.*

⁴²² *Ibid at 10.*

⁴²³ Picton, *supra* note 325.

⁴²⁴ Act 715, *supra* note 3 at s 18(2.)

⁴²⁵ General Comment No. 4, *supra* note 17 at 13, see para 39

towards inclusive education, involving students with and without disabilities in the same classroom and environment.

There is ongoing argument and controversy around whether special schools are ever consistent with inclusive education under the CRPD or a critical model of disability rights. The Committee of the CRPD, in its comments on article 24, stated that “Placing students with disabilities within mainstream classes without accompanying structural changes to, for example, organization, curriculum and teaching and learning strategies, does not constitute inclusion.”⁴²⁶ It asserts that integration⁴²⁷ alone does not ensure the shift from segregation to inclusion.⁴²⁸ Inclusion is a gradual process that may take time for a state to acquire the necessary resources to modify structures and teaching methods, raise awareness, and more.⁴²⁹ Quinn also argues that the CRPD provides exceptions for special schools in article 24(3)(c).⁴³⁰ Ghana, as a state and a signatory of the CRPD, is obligated to work towards removing barriers that hinder its efforts to achieve inclusive education. Although special school is also a way of providing education for children with disabilities, “inclusive education is the best modality to comply with the universality of the right to education.”⁴³¹ Beyond international commitments, the fact that inclusive education is in place in other jurisdictions like New Brunswick proves that inclusion is practicable. It is the responsibility of state parties that have ratified the CRPD to progressively work towards achieving

⁴²⁶ *Ibid* at 4, see para 11.

⁴²⁷ Integration is defined as “a process of placing persons with disabilities in existing mainstream educational institutions, as long as the former can adjust to the standardized requirements of such institutions.” Source: UNICEF, “The Right of Children with Disabilities to Education: A Right-Based Approach to Inclusive Education.” (Geneva, 2012); A/HRC/25/29, see para 4.

⁴²⁸ General Comments, *supra* note 17 at 4, see para 11.

⁴²⁹ The Committee defines inclusion to “involve a process of systemic reform embodying changes and modifications in content, teaching methods, approaches, structures and strategies in education to overcome barriers with a vision serving to provide all students of the relevant age range with an equitable and participatory learning experience and environment that best corresponds to their requirements and preferences.” See General Comment No. 4, *supra* note 17 at 4, see para 11.

⁴³⁰ Quinn, *supra* note 181 at 110.

⁴³¹ United Nations General Assembly, “Thematic Study on the Right of Persons with Disabilities to Education: Report of the Office of the United Nations High Commissioner for Human Rights” (2013). A/HRC/25/29. See para 10.

inclusive education for students with disabilities in the same environment as their peers without disabilities.⁴³²

2.8 Conclusion

In the modern world, education is essential to succeed in life. The right to education is to be enjoyed by everyone regardless of ability or disability. Access to justice and the enjoyment of other human rights may be compromised if persons with disabilities are not educated.⁴³³ Conversely, with education, persons with disabilities may be better able to navigate the legal and justice system and advocate for their rights.⁴³⁴

Ghana has yet to amend its Act 715.⁴³⁵ To achieve its purpose, this Act needs amendment, especially the provisions on education, to reflect the requirements of the CRPD. Ghana needs to be clear on what inclusive education means to the State and make policies that reflect that. It is evident in this chapter that Ghana has laws and policies on inclusive education, but 1) the laws in place are not yet in compliance with the CRPD, and 2) effective implementation enabling equitable access to education for all children with disabilities remains challenging. Policies and laws are not ends in themselves but must be implemented to achieve their goals. As a state, Ghana needs to set and act upon realistic goals in protecting and promoting the educational rights of persons with disabilities. The subsequent chapters will discuss how the province of New Brunswick in Canada has worked towards achieving inclusive education for persons with disabilities, including through the transition of students with disabilities from special schools into mainstream schools. This,

⁴³² General Comment No. 4, *supra* note 17 at 13, see para 39.

⁴³³ Auberon Jeleel Odoom, *Opening the Doors of Justice for Persons with Intellectual Disabilities in Ghana*, (Accra, Ghana: Inclusion Ghana). Online: <https://rodra.co.za/images/countries/ghana/research/OPENING%20THE%20DOOR%20OF%20JUSTICE%20TO%20PERSONS%20OF%20INTELLECTUAL%20DISABILITIES.pdf>.

⁴³⁴ *Ibid.*

⁴³⁵ Act 715, *supra* note 3.

together with observations on challenges New Brunswick has faced, will provide a basis for recommendations for Ghana as the State works towards this end.

CHAPTER 3 The Right to Inclusive Education in Canada (with a Focus on New Brunswick)

3.0 Introduction

Chapter two provided an analysis of Ghana's legal landscape regarding the rights of students with disabilities to inclusive education. The primary conclusion of Chapter two was that while Ghana, as a signatory to the United Nations *Convention on the Rights of Persons with Disabilities* (CRPD),⁴³⁶ is expected to align its domestic law and policies with the provisions of this international treaty, there remain gaps between the CPRD and Ghana's laws on inclusive education. While chapter two noted the existence of substantive legislation regarding the rights of persons with disabilities in Ghana, enacted before the country adopted the CRPD, it also demonstrated that the *Persons with Disabilities Act of Ghana, 2006* (Act 715)⁴³⁷ and the *Ghana Education Act, 2008* (Act 778)⁴³⁸ have many gaps and do not fully reflect the provisions of the CRPD. These gaps affect the nation's progress towards achieving an inclusive education system. In particular, as noted earlier, Ghana's legal regime adopts a segregation approach to protecting students with disabilities rather than inclusion as stated by the Committee on article 24 of the CRPD. As examined later in this chapter, scholars such as Professor Wayne Mackay argue that inclusion is not just about putting students together; it is an attitude and approach for all students, including those with disabilities, to nurture self-esteem and the feeling that they belong in school.⁴³⁹ Relying on Mackay's position, inclusion is achieved when students "feel accepted, valued, and secure."⁴⁴⁰ Of course, inclusive education presents many challenges at the implementation level. Chapter three aims to move beyond Ghana to examine a comparable

⁴³⁶ CRPD, *supra* note 4.

⁴³⁷ Act 715, *supra* note 3.

⁴³⁸ Act 778, *supra* note 264.

⁴³⁹ MacKay, *supra* note 2 at 6.

⁴⁴⁰ *Ibid* at 2.

jurisdiction for the insights that may be yielded from its laws and policies and more broadly its journey toward inclusive education.

This chapter discusses legislative and policy frameworks protecting the inclusive education rights of persons with disabilities in Canada, specifically in the province of New Brunswick. Like Ghana, Canada is a signatory to the CRPD and has substantive legislation protecting persons with disabilities' rights to inclusive education.⁴⁴¹ The starting point of the comparison is to examine whether Canada's legal regime on the protection of inclusive education rights generally aligns with the CRPD. Beyond the legal analysis, this chapter also focuses on analyzing policies made by relevant government institutions to operationalize and consolidate the objectives of the relevant legal regimes. Considering the size of Canada, which is bigger than Ghana in both land size and population, the chapter narrows the analysis to the province of New Brunswick. Focusing on the analysis also enhances its robustness. First, in Canada's federal system, education falls under the provincial powers; therefore, it is necessary to focus the analysis on provincial law – as well as the *Canadian Charter of Rights and Freedoms*.⁴⁴² Further, New Brunswick has one of the most robust legal frameworks and practices for the education of persons with disabilities in Canada.⁴⁴³ Thus, the province presents sufficient comparable material to weigh against Ghana's laws and policies and potentially provide recommendations for revisiting Ghana's inclusive education framework.

⁴⁴¹ Government of Canada, "Rights of People with Disabilities" (2024). Accessed from <https://www.canada.ca/en/canadian-heritage/services/rights-people-disabilities.html>.

⁴⁴² *Charter*, *supra* note 15.

⁴⁴³ A Wayne MacKay, "Connecting Care and Challenge: Tapping Our Human Potential - Inclusive Education: A Review of Programming and Services in New Brunswick." 1 at 2. (Report written for New Brunswick Department of Education and Early Childhood Development, 2006).

The chapter examines, in turn, s 15 of *the Canadian Charter of Rights and Freedoms (Charter)*,⁴⁴⁴ New Brunswick's *Human Rights Act*,⁴⁴⁵ *New Brunswick Education Act*,⁴⁴⁶ and New Brunswick's *Accessibility Act, 2024*.⁴⁴⁷ It also analyzes relevant policies from New Brunswick's Ministry of Education on inclusive education of persons with disabilities. It is worth noting that these policies were made before the enactment of the *Accessibility Act*. Thus, the *Charter*, *Human Rights Act*, and *Education Act* influenced the design of those policies.

In sum, I use New Brunswick as a comparable jurisdiction because of its highly developed laws and policies regarding persons with disabilities' rights to inclusive education. As a context, New Brunswick is one of the smallest provinces in Canada, situated beneath the Gaspé Peninsula of Quebec and beside the State of Maine.⁴⁴⁸ It is also one of the oldest provinces, having formed the Dominion of Canada in 1867, together with Nova Scotia, Quebec, and Ontario.⁴⁴⁹ New Brunswick has a population of over 80,000.⁴⁵⁰ Thirty-five percent of the population lives with a disability⁴⁵¹ -- the second-highest rate of disability in Canada after Nova Scotia.⁴⁵² This high proportion of persons with disabilities in New Brunswick's population may be a key driving force behind the province's innovative policies on inclusive education. In particular, persons with disabilities' organizations have played a significant role in advocating for reforms to laws and

⁴⁴⁴ *Charter*, *supra* note 15.

⁴⁴⁵ *Human Rights Act*, *supra* note 18.

⁴⁴⁶ *Education Act*, *supra* note 19.

⁴⁴⁷ *Accessibility Act*, *supra* note 20.

⁴⁴⁸ Government of New Brunswick, "Learn About New Brunswick." Online: https://www2.gnb.ca/content/gnb/en/gateways/about_nb.html#:~:text=New%20Brunswick%20is%20the%20largest,Dominion%20of%20Canada%20in%201867.

⁴⁴⁹ *Ibid.*

⁴⁵⁰ Statistics Canada, "Population Estimates, Quarterly." Release date: June 19, 2024. <https://www150.statcan.gc.ca/t1/tbl1/en/tv.action?pid=1710000901>.

⁴⁵¹ Statistics Canada, "New Data on Disability in Canada, 2022." Release date: December 1, 2023. <https://www150.statcan.gc.ca/n1/pub/11-627-m/11-627-m2023063-eng.htm>.

⁴⁵² *Ibid.*

policies in New Brunswick.⁴⁵³ The province has been globally recognized as a proactive jurisdiction that caters to persons with disabilities' right to inclusive education.⁴⁵⁴ A key takeaway for Ghana and similar jurisdictions may be that while high rates of disability may present as a problem, this may also help to drive innovative policies, as exemplified by the province of New Brunswick.

At the end of the chapter, findings will be made on whether the *Accessibility Act*, *Education Act*, *Human Rights Act*, and associated policies satisfy the imperatives of the CRPD and whether the province is indeed a model that Ghana should consider drawing upon in reforming its laws and policies on inclusive education.

3.1 An Overview of Canada's Legal Regime on the Right to Inclusive Education

3.1.1 Disability in Canada

Statistics Canada reports that Canada has a population of over 40 million.⁴⁵⁵ According to the 2022 Canadian Survey on Disability (CSD), 27 percent of the population aged 15 and over had one or more disabilities that prevented them from fully engaging in everyday activities.⁴⁵⁶ The model of disability informing the CSD goes beyond physical and medical conditions to include social factors, including lived experiences of persons with disabilities on how society or the wider social and physical environment limit participation in societal activities.⁴⁵⁷ The CSD reports that persons between the ages of 15 and 24 have the highest increased rate of disability since 2017, which is of particular importance to this work given that at least some members of that group are

⁴⁵³ Glenys Mann, et al., *Closing Special Schools: Lessons from Canada* (2023) 51 The Australian Educational Researcher 1729 at 1739. Available online: <https://link.springer.com/article/10.1007/s13384-023-00661-5>.

⁴⁵⁴ Stienstra, *supra* note 46 at 4.

⁴⁵⁵ Statistics Canada, "Canada's Population Estimates, Third Quarter 2023." Released: December 19, 2023. <https://www150.statcan.gc.ca/n1/daily-quotidien/231219/dq231219c-eng.htm>.

⁴⁵⁶ Statistics Canada, "The Disability Rate in Canada Increased in 2022." Published April 2024. <https://www.statcan.gc.ca/o1/en/plus/5980-disability-rate-canada-increased-2022>.

⁴⁵⁷ *Ibid.*

subject to public education policies.⁴⁵⁸ That is, students in high school fall into this group and may experience diverse barriers that limit their ability to enjoy the full benefits of education.

Considering that education is of a local nature, and thus, within provincial power under Canada's *Constitution Act 1867*,⁴⁵⁹ provinces have taken diverse approaches to accommodating students with disability.⁴⁶⁰ Generally, more than eighty percent of primary school students with special education needs in Canada spend at least half of their school day in conventional classes alongside their peers.⁴⁶¹ Models of inclusive education, especially those that cater to the requirements of students with disabilities, are widely accepted as fundamental aspects of public education in Canada.⁴⁶² The landscape of inclusive education in Canada is not just a product of good intentions but is guided by a robust framework of federal and provincial laws and policies.⁴⁶³ Diverse strategies have been adopted by different provinces in Canada, resulting in greater and lesser progress towards inclusive education, and a multitude of avenues for achieving that goal.⁴⁶⁴ I examine New Brunswick's inclusivity approaches and policies for students with disabilities later in the following section, in light of the general conclusion of commentators that it is the farthest advanced of all Canadian provinces/territories in this regard.⁴⁶⁵

⁴⁵⁸ *Ibid.*

⁴⁵⁹ The Constitution Act, 1867, 30 & 31 Vict, c 3, <<https://canlii.ca/t/ldsw>>. Article 93 states, "In and for each Province, the Legislature may exclusively make Laws in relation to Education."

⁴⁶⁰ Dafina Kohen et al., "Children with Disabilities and Educational System – A Provincial Perspective." Online: <https://www150.statcan.gc.ca/n1/pub/81-004-x/2007001/9631-eng.htm>.

⁴⁶¹ Jacqueline Specht et al., "Teaching in Inclusive Classrooms: Efficacy and Beliefs of Canadian Preservice Teachers" (2016) 20:1 Intl J Inclusive Education 2 at 2.

⁴⁶² EdCan Network, "Trends in Canadian Education" (2019). Online: <https://www.edcan.ca/articles/trends-2018-2019/>.

⁴⁶³ *Ibid.*

⁴⁶⁴ Laura Sokal & Jennifer Katz, "Oh, Canada: Bridges and Barriers to Inclusion in Canadian Schools" (2015) 30:1 Support for Learning 42 at 45-46; See Mann et al., *supra* note 453 at 1737.

⁴⁶⁵ Mann et al., *supra* note 453 at 1731. Many schools in Canada are transitioning from segregated or special schools to inclusive schools. However, New Brunswick, one province in Canada, has made significant progress toward achieving inclusive education for all students, including those with disabilities. This advancement has positioned New Brunswick as a model from which other provinces in Canada and countries around the world can learn.

3.2 New Brunswick’s Legal Protections for Persons with Disabilities Regarding Inclusive Education.

New Brunswick has implemented inclusive education models in its schools for almost forty years.⁴⁶⁶ Initially, in 1957, New Brunswick passed the *Auxiliary Classes Act*,⁴⁶⁷ which provided education and training to students who could not benefit from regular education due to a disability.⁴⁶⁸ While some parents felt their children were safer in auxiliary classes, the majority were disappointed by the educational experiences of their children with disabilities.⁴⁶⁹ Some also feared their children would end up isolated or segregated from others for their whole lives.⁴⁷⁰

On May 29, 1982, the then-Premier of New Brunswick, Richard Hatfield, declared in a speech at the 25th Annual Conference of New Brunswick Association of Community Living (NBACL), now called Inclusion New Brunswick,⁴⁷¹ that his government would integrate students with mental disabilities and other needs into regular schools.⁴⁷² This speech from the Premier came as a result of the determined advocacy and engagement of parents and educators who actively supported inclusive education in the province.⁴⁷³ This commitment was followed up by effective engagement with senior officials to drive this effort forward.⁴⁷⁴

⁴⁶⁶ Angela AuCoin, Gordon L. Porter & Kimberly Baker-Korotkov, “New Brunswick’s Journey to Inclusive Education” (2020) at 2. Accessed from <https://inclusiveeducation.ca/wp-content/uploads/sites/3/2020/09/FINAL-UNESCO-Article-NB-Inclusion-Sept-2020-AuCoin-Porter-Korotkov.pdf>.

⁴⁶⁷ Auxiliary Classes Act, SNB 1957, c 5.

⁴⁶⁸ Ben McNamara, “The Long Road to Inclusive Schools: In New Brunswick – 40 years and Counting” (2022). Online material https://inclusiveeducation.ca/wp-content/uploads/sites/3/2022/03/Family-Associations-Working-to-Advance-Inclusive-Education_NBACL.pdf.

⁴⁶⁹ *Ibid* at 4.

⁴⁷⁰ *Ibid*.

⁴⁷¹ The New Brunswick Association of Community Living was formed in 1957 by some local associations around the province that believed it wise to have a provincial federation for persons with disabilities. At the time, members included people with intellectual disabilities, their family members, professionals, neighbours, and friends. Now, its membership includes people with all kinds of disabilities.

⁴⁷² McNamara, *supra* note 468 at 4.

⁴⁷³ *Ibid*.

⁴⁷⁴ *Ibid*.

In 1983, after sponsored public hearings and reports from the Department of Education, it was decided to amend the *Auxiliary Classes Act* and the *Schools Act*.⁴⁷⁵ Advocacy from the period focused in part on a proposal for a single legal source to govern inclusive education. In June 1986, the province passed “*An Act to Amend the Schools Act*,”⁴⁷⁶ also known as Bill 85 which amended the *Auxiliary Classes Act* and *Schools Act*, and officially launched as a legal expectation the norm of full participation of all students in regular schools irrespective of their disability.⁴⁷⁷ Through this 1986 law, the province made its first official move toward inclusive education, reflecting earlier initiatives advanced by regional education bodies.⁴⁷⁸ This was portrayed as the cornerstone of guaranteeing an inclusive New Brunswick society.⁴⁷⁹

As was earlier observed, the education system in Canada is established by provincial law.⁴⁸⁰ Matters within provincial jurisdiction, like education, are governed through the interaction of various laws including the *Charter*, provincial human rights laws, other provincial laws, and international laws and obligations.⁴⁸¹ The foundation of inclusive education lies in responsiveness to learners' diverse identities, languages, interests, and abilities, which combine to create a unique experience and set of educational needs.⁴⁸² Gary Bunch traces the phrase “inclusive education” to a historic meeting held in the 1980s at Frontier College in Toronto, Ontario.⁴⁸³ Marsha Forest and her husband, Jack Pearpoint, organized a meeting to discuss ways to improve the academic

⁴⁷⁵ McNamara, *supra* note 468 at 5.

⁴⁷⁶ “An Act to Amend the Schools Act,” also known as Bill 85, amended the Education Act and repealed the Auxiliary Classes Act in New Brunswick. Bill 85 formally established inclusive education in New Brunswick. [Bill 85].

⁴⁷⁷ McNamara, *supra* note 468 at 5.

⁴⁷⁸ AuCoin et al., *supra* note 466 at 4.

⁴⁷⁹ *Ibid.*

⁴⁸⁰ Nancy Hutchinson & Jacqueline Specht, *Inclusion of Learners with Exceptionalities in Canadian Schools: A Practical Handbook for Teachers*, 6th ed (Toronto, Ont: Pearson Education Canada, 2019).

⁴⁸¹ *Ibid.*

⁴⁸² New Brunswick Canada, “Education and Early Childhood Development.” Available online : <https://www2.gnb.ca/content/gnb/en/departments/education/k12/content/rdi.html>.

⁴⁸³ Gary Bunch, “An Analysis of the Move to Inclusive Education: What Works” (2015) 18:1 Network Scientific J Latin America, Caribbean, Spain & Portugal. 3. Accessed from <https://www.redalyc.org/pdf/2170/217033485003.pdf>.

progress of people with disabilities. During the meeting, the phrase “inclusive education” was adopted, and it later gained popularity as a term of advocacy. In 1994, at the World Conference on Special Needs Education organized by UNESCO in Salamanca, Spain, delegates embraced inclusive education and endorsed the imperative that “all children should learn together, wherever possible, regardless of any difficulties or differences they may have.”⁴⁸⁴ Students with disabilities have the same right to enjoy quality education just as students without disabilities.⁴⁸⁵ In sum, as a general rule, inclusive education must be implemented through various public and community programs and services made available to every learner – with special sensitivity to diverse disabilities. In the ensuing paragraphs, I examine New Brunswick’s legal provisions for protecting students with disabilities’ right to inclusive education.

3.2.1 The Canadian Charter of Rights and Freedoms

The fundamental law on the rights of persons with disabilities throughout Canada is the *Canadian Charter of Rights and Freedoms*,⁴⁸⁶ which is part of the *Constitution Act, 1982*.⁴⁸⁷ Section 15 of the *Charter* guarantees equality to all individuals without discrimination, based on several factors, including but not limited to mental or physical disability.⁴⁸⁸ The *Charter* recognizes that persons with disabilities may not ordinarily have access to the benefits provided by law. Therefore, it protects them from exclusion. As will be discussed later in this chapter, provincial laws provide additional comprehensive policy frameworks for operationalizing protections from disability-based exclusion.

⁴⁸⁴ *Ibid* at 3, see also UNESCO, “Celebrating Inclusion in Education: 30th Anniversary of Salamanca Statement,” (2024). Online: <https://www.unesco.org/en/articles/celebrating-inclusion-education-30th-anniversary-salamanca-statement#:~:text=The%20Salamanca%20Statement%20adopted%20and,wherever%20possible%2C%20regardless%20of%20any.>

⁴⁸⁵ General Comment No. 4, *supra* note 17 at 7, see para 19.

⁴⁸⁶ *Charter*, *supra* note 15.

⁴⁸⁷ *Constitution Act*, *supra* note 26.

⁴⁸⁸ *Charter*, *supra* note 15 at sec. 14.

The case of *Eaton v Brant County Board of Education*⁴⁸⁹ gave the Supreme Court of Canada an opportunity to determine the meaning of inclusive education within the context of section 15 of the *Charter*.⁴⁹⁰ Emily Eaton had a condition affecting her communication and ability to walk without a wheelchair. Her public school decided to put her in a segregated learning environment, believing that an integrated setting was not in her best interests.⁴⁹¹ The Special Education Tribunal (established under Ontario's education law) affirmed the school's decision. Eaton's parents' application for judicial review in the Divisional Court was unsuccessful. The Court of Appeal allowed their appeal, but the Supreme Court of Canada overturned that decision. The Court concluded that the school's decision to segregate Eaton did not violate s.15 of the *Charter*.⁴⁹²

More specifically, the Supreme Court held that there was not a presumption favouring integration under s.15 of the *Charter*. Sopinka J, in a unanimous judgment, stated:

While integration should be recognized as the norm of general application because of the benefits it generally provides, a presumption in favour of integrated schooling would work to the disadvantage of pupils who require special education in order to achieve equality. Schools focussed on the needs of the blind or deaf and special education for students with learning disabilities indicate the positive aspects of segregated education placement. Integration can be either a benefit or a burden depending on whether the individual can profit from the advantages that integration provides.⁴⁹³

The required analysis was suggested to involve an individualized assessment of educational needs. Moreover, the analysis was to be "child-centred" and avoid overly weighting the interests or perspectives of the child's parents.⁴⁹⁴ The Supreme Court of Canada ruled that the Tribunal's decision to place Eaton in a segregated classroom reflected a correct understanding of

⁴⁸⁹ *Eaton v. Brant County Board of Education*, (1997) 1 SCR 241 [Eaton Case].

⁴⁹⁰ *Ibid.*

⁴⁹¹ *Ibid.*

⁴⁹² *Ibid.*

⁴⁹³ *Ibid* at para 79.

⁴⁹⁴ *Ibid* at para 77.

the applicable law. Still, it is notable that while the matter was pending, Eaton's parents enrolled her in a Catholic school, which placed her in an integrated setting. As Malhotra and Hanson suggest, the decision of the Catholic school board to place Eaton in an integrated setting undermined the Supreme Court's reasoning that segregation was in Eaton's best interests.⁴⁹⁵

The Supreme Court of Canada specifically affirmed a complaint with s. 15 the reasoning of the Special Education Tribunal on four unique challenges that Eaton faced, which the Tribunal concluded justified placing her in a segregated placement. The first challenge was Eaton's alleged inability to communicate, including her inability to communicate whether she was enjoying the integrated setting. On this point, the Tribunal further found that Eaton's regular crying and sleeping suggested her discomfort with the inclusive environment. The second challenge related to Eaton's intellectual and academic needs, which were said not met or clearly met in the inclusive environment. The third challenge was said to be emotional and social, while the fourth related to Eaton's physical and personal safety.⁴⁹⁶ On the latter point, the court noted the tribunal's conclusion that Eaton's physical safety in regular classes would not be as secure as it would be in a segregated classroom.⁴⁹⁷ On the whole, the Supreme Court accepted as non-discriminatory the Tribunal's reasoning in support of its conclusion that Eaton's three years in the integrated placement were counter-productive and did not yield any positive results for her.

One of the key takeaways from the judgment on how s.15 *Charter* applies to people with disability is its guidance on the lack of a constitutional presumption toward inclusion and resisting segregation. The Eaton judgment suggests that both inclusion and segregation can be a burden or

⁴⁹⁵ Ravi Malhotra & Robin F. Hansen, "United Nations Convention of the Rights of Persons with Disabilities and its Implications for the Equality Rights of Canadians with Disabilities: The Case of Education" (2011) 29:1 Windsor Yearbook of Access to Justice. 73 at 93.

⁴⁹⁶ Eaton case, *supra* note 489 at 255-257, see para. 16-21.

⁴⁹⁷ *Ibid* at 276, see para. 75.

benefit to persons with disability, depending on the applicable facts. It is, therefore, inappropriate to simply assume, without attentiveness to the evidence, that one is better than the other. Specifically, the court stated that “segregation can be both violative and protective.”⁴⁹⁸ The test adopted to determine whether segregation or inclusion will be adopted is a contextual test. As noted, the court rejected a s.15 *Charter*-based rebuttable presumption that inclusion is best and instead required a contextual assessment that considers the best interests of a child in all the circumstances.⁴⁹⁹

If the Supreme Court had an opportunity to determine a similar case today, in light of the standards in contemporary international treaties and domestic laws, the decision would arguably be different. Dianne Pothier advanced an argument of this kind in 2006, specifically promoting as an alternative to the court’s “separate but equal” reasoning a presumption of integration that is potentially rebuttable but places a burden on the state or schools to justify.⁵⁰⁰ Pothier grounds this argument in the constitutional requirement that school environments be accommodating.⁵⁰¹ Since Pothier’s interventions, there is now more even support for the argument that Eaton should have been given the necessary individualized support to be educated in the same school environment as her peers – namely, article 24(2)(d)&(e) of the CRPD, which states that

States Parties shall ensure that: Students with disabilities receive the support required, within the general education system, to facilitate their effective education; Effective individualized support measures are provided in environments that maximize academic and social development, consistent with the goal of full inclusion.⁵⁰²

⁴⁹⁸ *Ibid* at 273-274, see para. 69.

⁴⁹⁹ *Ibid* at 278-279, see para. 78 and 79.

⁵⁰⁰ Dianne Pothier, “Eaton v Brant County Board of Education” (2006) 18 CJWL 121 at 142, see paras. 57-58.

⁵⁰¹ *Ibid*.

⁵⁰² CRPD, *supra* note 3 at art 24(2).

Relatedly, the CRPD also provides under article 24(3) that States Parties are to ensure that certain tools, equipment, and technology are available to facilitate the full and equal participation of persons with disabilities in education.⁵⁰³

It should be noted here that the CRPD impacts the interpretation of the *Charter* and must influence judicial decisions in *Charter* litigation.⁵⁰⁴ The Supreme Court of Canada has endorsed the principle of conformity – that is, the principle that “the Charter should generally be presumed to provide protection at least as great as that afforded by similar provisions in international human rights documents which Canada has ratified.”⁵⁰⁵ Malhotra argues that the court’s decision in the Eaton case might have been different today, considering that Article 24 of the CRPD mandates inclusion rather than segregation.⁵⁰⁶ Eaton’s situation exemplifies the social model of disability, as she experienced exclusion in school due to her disability.⁵⁰⁷ Deducing from Malhotra’s argument, a critical disability theory (CDT) approach is the most effective method for ensuring equal access to all aspects of social life.⁵⁰⁸

Returning to the New Brunswick context, with the recent enactment of the New Brunswick *Accessibility Act* – and indeed, taking account of the other laws discussed below – a key question is whether segregated classrooms or schools should ever be considered or promoted, for instance where the inclusion mandated by the Act and CRPD is not yielding any beneficial results – or is understood to be causing harm to the individual or others. As noted, the judgement in *Eaton* suggests the legality of segregation where integrated placement is counter-productive – and

⁵⁰³ *Ibid* at art 24(3).

⁵⁰⁴ Malhotra & Hansen, *supra* note 495 at 88.

⁵⁰⁵ Per Dickson CJ in dissent in *Reference re Public Service Employee Relations Act (Alta.)*, [1987 CanLII 88 \(SCC\)](#), [1987] 1 S.C.R. 313; subsequently endorsed (and refined) by Supreme Court of Canada majorities; see *Quebec (Attorney General) v. 9147-0732 Québec inc.*, 2020 SCC 32 (CanLII), [2020] 3 SCR 426 at para 31.

⁵⁰⁶ Malhotra & Hansen, *supra* note 495 at 105.

⁵⁰⁷ Stienstra, *supra* note 46 at 4.

⁵⁰⁸ Tremain, *supra* note 69 at 47.

otherwise holds that the condition and circumstances of a person with disabilities must determine the conclusion as to an integrated or segregated placement. What does this mean for school or classroom placement decisions – or, prior to that, decisions about directing resources to integrated or segregated classrooms – in New Brunswick today? This question must be answered in a way that is mindful of Dianne Pothier’s point that if segregated education is held out as the only or best option for a student with a disability due to insufficient resources devoted to or offered in integrated classrooms, then the State has failed such a child in the enjoyment of the right to inclusive education.⁵⁰⁹

3.2.2 New Brunswick’s Legislative Approach to Persons with Disabilities Right to Inclusive Education

3.2.2.1 New Brunswick Human Rights Act

The New Brunswick *Human Rights Act (Human Rights Act)*,⁵¹⁰ first enacted in 1967, establishes a legal framework that prohibits discrimination. S. 6.1 of the *Human Rights Act* provides prohibited grounds of discrimination in the provision of various services, which include education – this includes discrimination on the basis of physical or mental disabilities.⁵¹¹ The *Human Rights Act* further provides in section 6 that,

No person, directly or indirectly, alone or with another, by himself, herself or itself or by the interposition of another, shall, based on a prohibited ground of discrimination, deny to any person or class of persons any accommodation, services or facilities available to the public, or discriminate against any person or class of persons with respect to any accommodation, services or facilities available to the public.⁵¹²

⁵⁰⁹ Pothier, *supra* note 500.

⁵¹⁰ *Human Rights Act*, *supra* note 18.

⁵¹¹ *Ibid* at s.6.1.

⁵¹² *Ibid*.

Although the *Human Rights Act* does not have direct provisions on education, the New Brunswick Human Rights Commission (and the courts in New Brunswick) has interpreted section 6 of the Act to include educational services.⁵¹³

The significance of anti-discrimination statutes to inclusive education is made clearer in the British Columbia case of *Moore v. British Columbia (Education)*.⁵¹⁴ There, a child identified as J, who was dyslexic, had received special education at a public school in the first couple of years of his schooling. When J was in grade 2, a psychologist recommended that he attend a local Diagnostic Centre for assessment and referral for any necessary remedial support, as he was not getting the required help at school. However, the Diagnostic Centre in J's school district was subsequently closed. In addition to the closure of the Diagnostic centre, the failure of the school to provide special support led J's father to transfer him to a private school. Subsequently, J's father filed a complaint with the British Columbia Human Rights Tribunal against the school district and the province on J's behalf. The complaint argued that J had been denied "a service...customarily available to the public" under section 8 of the *British Columbia Human Rights Code*,⁵¹⁵ based on disability.⁵¹⁶

The matter went all the way to the Supreme Court of Canada. The Supreme Court upheld the tribunal's findings that there was discrimination against J by the District, set aside the Court of Appeal's decision that there was no discrimination, and ruled in favour of J. The Supreme Court upheld the tribunal's specific finding that the District had closed the Diagnostic Center without

⁵¹³ New Brunswick Human Rights Commission, "Guideline on Accommodating Students with a Disability," (2017). Accessed from <https://www2.gnb.ca/content/dam/gnb/Departments/hrccdp/PDF/GuidelineonAccommodatingStudentswithaDisabilityK-12HRC-CDP201702.pdf>. [The Guideline].

⁵¹⁴ *Moore v. British Columbia (Education)*, (2012) 3 SCR 360 [Moore].

⁵¹⁵ Human Rights Code, RSBC 1996, c 210. [BC Human Rights Code].

⁵¹⁶ *Ibid* at s. 8; see also Moore, *supra* note 514 at 361.

considering the adverse impact it would have on students with special educational needs or considering less impairing alternatives. However, the court rejected the tribunal's further conclusion that the Province, too, had discriminated against J, on the basis that this conclusion (relating to budgetary allocations) was outside the scope of the evidence and argument submitted to the tribunal. The Supreme Court also rejected the tribunal's systemic remedies placed on the Province, on the basis that J's claim was specific to him, even though it may carry broader implications. The Supreme Court approved the remedy of compensating J's private tuition but ruled that the order imposed on the Province to direct sufficient funding to the district to support special education was too remote from the facts and arguments made by J.⁵¹⁷

The Supreme Court's judgement in *Moore* clarifies how persons with disabilities can use human rights instruments to address disability discrimination. In the education context, discrimination is not only limited to acts of excluding persons with disabilities from integrated placements where the integration placement is in their best interest. In Moore's case, discrimination further included failure to provide the means through which a person with disabilities could achieve benefits (here, the benefit of education) customarily available to the public. The judgment affirms that education services are benefits customarily available to the public under provincial education law, and that accommodation of the needs of J and others with disabilities is the means through which those services must be made available. By underfunding the Severe Learning Disability program specifically and closing the Diagnostic Centre without consideration of a less restrictive alternative, the District discriminated against J and denied him access to educational services. This formed the basis for the Supreme Court's upholding the

⁵¹⁷ Moore, *supra* note 514 at 389.

Tribunal order awarding damages to J for the cost of his enrollment in a private school that offered services that the District should have provided.

New Brunswick's *Human Rights Act*⁵¹⁸ has the same basic structure as British Columbia's *Human Rights Code*.⁵¹⁹ The Government of New Brunswick (NB) has a mandate to make services and facilities available to students with disabilities to ensure that they enjoy equal access to (inclusive) education.⁵²⁰ The same duties are placed on private educational institutions so long as they offer their services to the public.⁵²¹ Section 17 of the *Human Rights Act* permits individuals to lodge a written complaint with the Human Rights Commission (the Commission).⁵²² Section 18 of the *Human Rights Act* specifically provides that "a complaint shall be filed within one year after the alleged violation of the Act."⁵²³ Also, the Human Rights Commission issued a *Guideline on Accommodating Students with a Disability K-12* (Guideline) in 2017.⁵²⁴ The Guideline elaborates on the forms of disability requiring accommodation under the *Human Rights Act*. Specifically, this policy recognizes that the forms of disability to be accommodated include invisible disabilities.⁵²⁵ It gives a long list of examples of disability and adds that the list is not exhaustive, thereby allowing for the characterization of other conditions as disability.⁵²⁶

The Guideline defines accommodation as treating students equitably in a manner that ensures that disabled students can achieve their full potential in and outside the classroom.⁵²⁷ The

⁵¹⁸ *Human Rights Act*, *supra* note 18.

⁵¹⁹ BC Human Rights Code, *supra* note 515.

⁵²⁰ *Human Rights Act*, *supra* note 18 at s. 2.

⁵²¹ *Ibid*.

⁵²² *Ibid* at s. 17.

⁵²³ *Ibid* at s.18.

⁵²⁴ The Guideline, *supra* note 513.

⁵²⁵ *Ibid* at 7.

⁵²⁶ *Ibid* at 6.

⁵²⁷ *Ibid* at 8.

Guideline further states that accommodation has three principles.⁵²⁸ First, accommodation must respect the dignity of students with disabilities.⁵²⁹ Second, accommodation must be tailored to the individual and should not be generalized for a category of disability.⁵³⁰ This implies that accommodations may (and likely will) vary from one person to another. Third, and of particular importance to this chapter's analysis, disabled students must be included in regular classes with other students.⁵³¹ However, in exceptional circumstances where it is impossible to include students with disabilities in the regular class, the school may take a temporary measure outside the classroom -- but must work towards returning them to the regular class.⁵³²

The principles of accommodation in the Commission's Guideline are the same as those in its further Guideline: the *Guideline for Students with Disabilities in Post-Secondary Institutions*.⁵³³ In both Guidelines, education providers have a legal duty to provide inclusive education (accommodation) to students with a disability.⁵³⁴ These policies do not in themselves have the force of law; rather, they state the Commission's position on what educational providers must do to comply with the *Human Rights Act*.⁵³⁵ However, they are an important indicator of the Commission's understanding of the law. As earlier argued, these policies are supported by (and arguably go even further than) the *Moore* case, described above, which underscores government's role at the District or school board level in providing necessary means through which persons with disabilities can access educational services as customarily available benefits to the public. There is at least one reported judicial decision on inclusive education under New Brunswick's *Human*

⁵²⁸ *Ibid* at 11.

⁵²⁹ *Ibid*.

⁵³⁰ *Ibid*.

⁵³¹ *Ibid* at 13.

⁵³² *Ibid*.

⁵³³ *Ibid* at 3.

⁵³⁴ *Ibid*.

⁵³⁵ *Ibid*.

Rights Act: New Brunswick Human Rights Commission v. New Brunswick (Dept. of Education).⁵³⁶

It is discussed below.

3.2.2.2 New Brunswick's *Education Act*: Key Provisions

New Brunswick's *Education Act* also protects inclusive education for persons with disabilities. Section 1 of New Brunswick's *Education Act* provides that 'common learning environment (CLE)' means "an inclusive learning environment (a) in which instruction is designed to be delivered to pupils in similar age groups and of various abilities at their neighbourhood school for the majority of regular instruction hours, and (b) that is responsive to the pupil's individual needs as a learner."⁵³⁷ To work towards achieving CLE, the Minister of Education and Early Childhood is responsible to "establish educational goals and standards and service goals and standards for public education in each of the education sectors."⁵³⁸ In this way, the Act acknowledges various forms of student abilities and encourages the learning of both students with and without disabilities in the same schools. The *Education Act* provides in s.11 that "The superintendent concerned shall determine the placement of pupils in classes, groupings, grades, programs, services and schools according to the needs of the pupils and the resources of the school district."⁵³⁹

The *Education Act* does not expressly obligate the government to fund inclusive education. However, per s. 1.1 (a), the purpose of the Act includes recognition "that the school system is founded on the principles of free public education, linguistic duality and the inclusion of all pupils."⁵⁴⁰ The *Education Act* further requires school officials to develop personalized learning

⁵³⁶ *New Brunswick Human Rights Commission v. New Brunswick (Dept. of Education)*, 2005 NBQB 90. Accessed from <https://canlii.ca/t/1jtw9>. [Cudmore case].

⁵³⁷ *Education Act*, *supra* note 19 at s. 1.

⁵³⁸ *Ibid* at s. 6 (a).

⁵³⁹ *Ibid* at s.11.

⁵⁴⁰ *Ibid* at s. 1.1 (a).

plans (PLPs) for students, including those with disabilities, that “individually or specifically identify practical strategies, goals, outcomes, targets and educational supports.”⁵⁴¹ These plans must promote inclusion in a “common learning environment”. More specifically, s.12(3) relates the PLPs to placement decisions of the superintendent as follows:

The superintendent concerned shall place a pupil requiring a personalized learning plan so that the pupil receives the programs and services within the common learning environment to the fullest extent considered practicable having regard for the rights and needs of that pupil and the needs of other pupils.⁵⁴²

Together, these key aspects of the Act – its purpose (to support inclusion of all students in a common learning environment), its mandating of PLPs for students requiring accommodations, and its requiring school superintendents to place students with personalized learning plans in inclusive schools “to the fullest extent considered practicable” -- reflect the central principle of equitable access to education endorsed in *Moore*, discussed above. Although that case arose in British Columbia, it is an important precedent for every province in Canada since each has a statutory human rights code similar to the British Columbia *Human Rights Code*.⁵⁴³

Yet it is also important to recall the Supreme Court of Canada’s conclusion in *Moore* that the government’s budgetary decisions were “too remote” from the evidence concerning the actions and inactions barring Moore from accessing public education. Contrary to the Supreme Court’s ruling, the root problem in that case was not, or arguably not, the District’s decision to close the special education resource centre but rather the failure of the province to allocate sufficient funds to support student-centred accommodations. It is not clear that New Brunswick’s *Education Act* places a duty on the government to ensure adequate resources to enable inclusive school

⁵⁴¹ *Ibid* at s. 12.

⁵⁴² *Ibid* at s. 12(3).

⁵⁴³ BC Human Rights Code, *supra* note 515.

placements to happen. That said, by making provision for PLPs and requiring placement decisions to presumptively be in inclusive schools (“common learning environments”), New Brunswick’s *Education Act* recognizes that students with disabilities have a right to equitable access to education services. Again, one of the fundamental principles of inclusive education, according to Policy 322, is acknowledging students’ diverse needs and identifying means that suit these different needs; while students with a disability may require a personalized learning plan because of their challenges, other students may not require it to learn in a common learning environment. Thus, both law and policy show the province’s endorsement of inclusive education.

Concerningly, however, the *Education Act* provides a further express exception to the imperative of inclusion (beyond the language of section 12(3) on the limits of “practicability” and “the rights and needs of th[e] pupil and the needs of other pupils” in section 12(4), as follows:

The superintendent concerned may deliver programs and services for pupils requiring a personalized learning plan to a pupil at the pupil’s home or other setting if the pupil is not able to receive the program or service in a school due to

- (a) the pupil’s fragile health, hospitalization or convalescence, or
- (b) a condition or need that requires a level of care that cannot reasonably be provided effectively in a school setting.⁵⁴⁴

This provision, allowing the superintendent to place students with disabilities in an environment other than the common learning environment, echoes one of the major holdings in *Eaton*. As noted earlier, there the Supreme Court of Canada held that the question of whether segregation or inclusion is in a student’s best interest requires a contextual analysis which includes attention to the student’s condition and needs. S. 12(4) codifies the *Eaton* principle in the sense that the superintendent may provide personalized learning plans outside the common learning environment if that is in the student’s best interest. However, the Act differs from the principles stated in *Eaton*

⁵⁴⁴ *Ibid* at s. 12(4).

in placing an onus on the superintendent to justify any exception to or departure from the default or presumptive expectation of inclusion (precisely the presumption that was rejected in *Eaton*). Here it is important to add that s.11(3) of the *Education Act* can be used to check failures to justify such departures from the presumption through an appeal from an exercise of the decision-making powers granted to the superintendent. Specifically, this subsection allows parents to appeal decisions made regarding the placement of students, including determinations of where to provide personalized learning plans.⁵⁴⁵

The application of s. 12 regarding placement of students with disabilities in either an integrated or segregated setting was considered in the case of *New Brunswick Human Rights Commission v. New Brunswick (Dept. of Education)*.⁵⁴⁶ Cudmore, the complainant, argued that the respondents did not appropriately accommodate her son's special needs as required by s. 5 of the *Human Rights Act*.⁵⁴⁷ The complaint was filed by Cudmore against the Department of Education and School District 2, alleging discrimination against her son, N, based on his mental disability. Initially, a Board of Inquiry under the *Human Rights Act* dismissed the complaint, leading Cudmore to seek judicial review at the New Brunswick Court of Queen's Bench, Trial Division. In that case, the court was tasked with determining if the respondents had violated s. 5 of the *Human Rights Act*.⁵⁴⁸

The mental disability of the child was not in dispute; what was in dispute was whether the school provided the necessary accommodation and placement to the child. The complainant alleged that the school did not provide the required support, but the evidence before the court

⁵⁴⁵ *Ibid* at s. 11(3).

⁵⁴⁶ Cudmore case, *supra* note 536.

⁵⁴⁷ *Ibid*.

⁵⁴⁸ Human Rights Act, *supra* note 18 at s. 5.

established that the school had indeed accommodated the complainant's request regarding her child. The only request the school had declined to accommodate was the complainant's request that the school should provide one-on-one teaching support for the child or alternatively fund the child's enrollment in a private school dedicated to students with ADHD and other learning disabilities which devoted a higher concentration of resources to the support of individual students. School officials took the position that this level of support was unnecessary and that its duty was rather to provide special education programs under the *Education Act* to the children within regular classes, within the limits of existing resources.

The court concluded that the overwhelming evidence before the tribunal had established that the child was not performing below expectations or below the class average. This was considered proof that the special education program that the school provided was yielding positive results. The court, therefore, affirmed the finding of the Board of Inquiry that there was no discrimination against the child. Rather, the complainant's decision to enrol the child in a private school had been a matter of personal preference, and funding for his private education was not the duty of public officials. In short, the allegation of violating s. 5 of the *Human Rights Act* on the grounds of disability was not sustained.⁵⁴⁹ Where support can be given to a student with a disability in a regular school, there is no need to seek a special (private) school.

While the reasoning in *Cudmore* makes sense on its own terms, it does leave open questions about how school officials and human rights tribunals alike make determinations about the limits of available resources – and so the kinds of supports available to students with disabilities who are

⁵⁴⁹ *Ibid.*

accommodated within the common learning environment as well as those who are determined to have needs exceeding the common learning environment.

3.3 Education Act: Recent Reforms

As noted above, the New Brunswick legislature introduced reforms to the *Education Act* and introduced Personalized Learning Plans (PLPs) in section 12, which states that “a personalized learning plan shall be developed for a pupil if the superintendent concerned, after consulting with qualified persons, determines that the physical, sensorial, cognitive, social-emotional or other needs of the pupil requires that a personalized learning plan be developed.”⁵⁵⁰ The PLP regime was further developed in Policy 322.⁵⁵¹ Under the law and policy, PLPs are to be based on the needs and strengths of a student and not merely a deficit model of the student’s disability.⁵⁵² They require continuous monitoring of students’ progress to support and accommodate a student with special needs in a common learning environment.⁵⁵³

New Brunswick further amended its *Education Act* in 2021 (through Bill 35, ‘*An Act Respecting Empowering the School System*’) to address the needs of students with disabilities, among other objectives.⁵⁵⁴ That Bill sparked a debate between the Progressive Conservative government and opposition parties.⁵⁵⁵ The governing Progressive Conservative Party argued that the reforms were needed in part to respond to a shortage of psychologists available to do psycho-

⁵⁵⁰ *Education Act*, *supra* note 19 at sec. 12.

⁵⁵¹ Policy 322 defines a Personalized Learning Plan as a plan for a student who requires specific and individual identification of practical strategies, goals, outcomes, targets and educational supports that ensure the student experiences success in learning that is meaningful and appropriate, considering the student’s individual needs. See AuCoin et al., *supra* note 466 at 13.

⁵⁵² *Ibid.*

⁵⁵³ *Ibid.*

⁵⁵⁴ *An Act Respecting Empowering the School System*, SNB 2021, c.10.

⁵⁵⁵ Nathalie Sturgeon, “New Brunswick Education Bill Passes with Higgs Majority Despite Pushback,” Global News (11 June 2021). Online: <https://globalnews.ca/news/7939248/new-brunswick-bill-35-passes/>. Also see Jacques Poitras, “Liberal Slow Contentious Education Bill, PCs Vow to Pass it This Summer,” CBC News (19 May 2021). Online: <https://www.cbc.ca/news/canada/new-brunswick/education-bill-35-school-psychologist-1.6031516>.

educational assessments.⁵⁵⁶ Given this gap, the Act provided that with ministers' approval, teachers with a master's degree could administer a psychological test known as the Wechsler Intelligence Scale for Children (WISC).⁵⁵⁷ The New Brunswick Association of School Psychologists (NBASP) described the Bill as misguided and unethical, arguing that it posed risks to the public by allowing teachers who have not undergone rigorous psychology training to administer the WISC.⁵⁵⁸

In addition to criticisms raised by the New Brunswick Association of School Psychologists regarding provisions of Bill 35 authorizing teachers to do psycho-educational assessments, Inclusion New Brunswick, an organization that focuses on advocacy and promoting inclusion in that province, raised concerns about amendments passed as section 48(2)(g.1).⁵⁵⁹ Before Bill 35, provision for an alternative education program, i.e., an alternative avenue of learning to the common learning environment for students who may not otherwise complete high school, was limited to the high school context.⁵⁶⁰ The Bill removed 'high school' from the section, implying that the alternative education program may now be provided to all students at all educational levels. According to Inclusion New Brunswick, the rationale for limiting the alternative program to high school was premised on the belief that students in primary and junior high should be and would be accommodated under the inclusive special education programming contemplated in section 12.⁵⁶¹ With this latest development, there is a risk that younger students may be placed in segregated placements contrary to the requirements of the CRPD and the long-established tradition of New

⁵⁵⁶ *Ibid.*

⁵⁵⁷ An Act Respecting Empowering the School System, *supra* note 554 at s. 11.

⁵⁵⁸ New Brunswick Association of School Psychologists, "Concerns Regarding Bill Amendment of Education Act." Online: <https://cpcb.ca/wp-content/uploads/2021/05/NBASP-Response-to-Bill-35-EECD-and-Stakeholders-English-1.pdf>.

⁵⁵⁹ Inclusion New Brunswick, "Bill 35 and Inclusive Education: A Reader's Guide on Potential Impacts on Student with a Disability." 2 at 3. Available online: <https://www.inclusionnb.ca/wp-content/uploads/2023/11/Bill-35-Readers-Guide-April-2021-2.pdf>.

⁵⁶⁰ *Ibid.*

⁵⁶¹ *Ibid* at 2.

Brunswick as leading the way in inclusive education.⁵⁶² Mann et al, in a recent article, suggest that the province “*leads the world regarding the closure of segregated schools [citing AuCoin et al., 2020] and inclusive education reform.*”⁵⁶³ Whether this law reform will result in increased departures from the presumption of inclusive schooling – whether through recourse to “special schools” (public or private) or, worse still, exclusion of some students from any school setting (a trend recently exposed by the province’s Child and Youth Advocate), remains to be seen.

Notwithstanding the controversy around Bill 35, including deep differences of opinion on whether the government’s response to a shortage of school psychologists and its apparent expansion of prospective “alternative environments” was appropriate, the Bill arguably demonstrated New Brunswick’s continuing commitment to inclusive education. That is, even the political controversy that arose around the reforms described demonstrated how seriously the province as a whole – all political parties -- takes inclusive education. Since the inception of Bill 85 in 1986, New Brunswick has been demonstrating this commitment through highly publicized law reform and policymaking. This includes action taken to promote independent reviews of its extant policies through detailed reports from experts such as Mackay in 2006 and Porter and Aucoin in 2012, together with action taken to implement experts’ recommendations, as exemplified by Policy 322, itself influenced by the 2012 report. These reviews and reports are described in more detail in the final section of this chapter.

Thirty-five years after the introduction of Bill 85, New Brunswick continues to be regarded as one of the pioneers in the movement toward inclusive education.⁵⁶⁴ New Brunswick’s Ministry of Education has received several awards and international recognition for its work in inclusive

⁵⁶² *Ibid.*

⁵⁶³ Mann et al., *supra* note 453 at 1731.

⁵⁶⁴ AuCoin et al., *supra* note 466 at 2.

education. In 2013, it was selected from 54 nominees as one of two recipients of the UNESCO/Emir Jaber al-Ahmad al-Jaber al-Sabah Prize for promoting quality education for persons with intellectual disabilities.⁵⁶⁵ In 2016, the World Future Council, in partnership with the Zero Project Organization, recognized and identified New Brunswick’s Policy 322: Inclusive Education as “an exemplary policy that breaks down barriers and contributes to building an inclusive society.”⁵⁶⁶ It is not surprising that New Brunswick earned global prestige, considering the innovative meaning of inclusive public education under Policy 322.

3.2 Accessibility Act of New Brunswick, 2024 (Bill 47)

*The Accessibility Act of New Brunswick, 2024*⁵⁶⁷ is the most recent law reform effort of obvious relevance to inclusive education. The new law has been welcomed by various New Brunswick governmental organizations, non-governmental organizations, individuals, and advocacy groups. Haley Flaro, Ability New Brunswick’s⁵⁶⁸ executive director, said in a statement: “This province has the second-highest rate of disability in Canada, so it is essential that New Brunswick place an accessibility lens on public policy. This legislation is the foundation to making accessibility a priority.”⁵⁶⁹ Greg Turner, the Minister of Post-Secondary Education, Training, and

⁵⁶⁵ UNESCO, “UNESCO/Emir Jaber al-Ahmad al-Jaber al-Sabah Prize to Promote Quality Education for Persons with Intellectual Disabilities,” (2014). Paris: UNESCO. https://webarchive.unesco.org/20161026074335/http://www.unesco.org/new/en/education/resources/online-materials/single-view/news/celebrating_excellence_in_education_for_people_with_disabilities/

⁵⁶⁶ Zero Project, “Zero Project Report 2016.” (2016). Klosterneuburg: Essl Foundation. Available online: <https://bit.ly/3fvV4y3>.

⁵⁶⁷ Accessibility Act, *supra* note 20.

⁵⁶⁸ Ability New Brunswick (ABN) is “an autonomous, community-based, provincial non-profit organization governed by a volunteer Board of Directors.” ABN offers free, confidential and bilingual services to anyone with a mobility disability in New Brunswick. It aims to enable people with mobility disabilities in all of New Brunswick to live independently and fully engage in society. ABN gets its funding from donations from the public. Online: <https://www.abilitynb.ca/about-us/>.

⁵⁶⁹ New Brunswick Canada (News Release), “Accessibility Legislation Introduced.” (17 May 2024). https://www2.gnb.ca/content/gnb/en/news/news_release.2024.05.0208.html.

Labour, added, “We are extremely proud to bring forward this historic bill, one that positions our province to make significant progress for individuals living with disabilities.”⁵⁷⁰

Similar to the *Accessible Canada Act*⁵⁷¹ passed by the federal government and restricted to matters within federal jurisdiction, section 1 of New Brunswick’s *Accessibility Act* defines the term disability to mean “any impairment, including a physical, mental, intellectual, cognitive, learning, communication or sensory impairment — or a functional limitation — whether permanent, temporary or episodic in nature or evident or not, that, in interaction with a barrier, hinders a person’s full and equal participation in society.”⁵⁷² This broad and inclusive definition reflects the social model of disability, adapting the definition of disability from the CRPD to reflect and encompass in comprehensive fashion social, functional, and medical models of disability. Haley Flaro calls it a “progressive definition”.⁵⁷³ As one indication of its comprehensiveness, this is the only statute in Canada that includes persons with learning disabilities in its definition of disability.⁵⁷⁴

Section 2 of the *Accessibility Act* recognizes that barriers to accessibility impact all persons, especially persons with disabilities.⁵⁷⁵ Therefore, there is a need to involve persons with disabilities “in the development and design of laws, policies, programs, services and structures that impact their full and effective participation in society on an equal basis with others.”⁵⁷⁶ The definition section of the *Accessibility Act* defines barriers as “a physical barrier, an architectural or structural barrier, an information or communications barrier, an attitudinal barrier, a technological barrier, a

⁵⁷⁰ *Ibid.*

⁵⁷¹ Accessible Canada Act, *supra* note 30.

⁵⁷² Accessibility Act, *supra* note 20 at sec. 1.

⁵⁷³ Savannah Awde, “Proposed Accessibility Laws Will Help Those 'Being Left Behind,' says Advocate.” Posted May 19, 2024. CBC News <https://www.cbc.ca/news/canada/new-brunswick/advocate-accessibility-laws-1.7208980>

⁵⁷⁴ *Ibid.*

⁵⁷⁵ Accessibility Act, *supra* note 20 at sec. 2.

⁵⁷⁶ *Ibid.*

policy or a practice.”⁵⁷⁷ Further, sections 2(a)(iii) and (iv) affirm the rights of persons with disabilities in province’s *Human Rights Act*, the *Canadian Charter of Rights and Freedoms*,⁵⁷⁸ and the CRPD. The central purpose of the *Accessibility Act* is firmly centred on pragmatics: “to achieve a more accessible New Brunswick by 2040 by identifying, preventing and removing barriers to accessibility through the creation of accessibility standards” relating to various aspects of social participation, including a standard in respect to education.⁵⁷⁹

Greg Turner, then Minister of Post-Secondary Education, Training, and Labour, said in a statement that the *Accessibility Act* affirmed New Brunswick’s commitment to implementing the provisions of the CRPD.⁵⁸⁰ Moreover, the *Accessibility Act* affirms the primacy of accessibility law over laws that are non-compliant, stating in s.4 that “If a provision of this Act or a regulation under this Act is inconsistent with or in conflict with a provision of any other act or regulation, the provision of this Act or the regulation under this Act prevails unless the provision of the other act or regulation provides a higher level of accessibility.”⁵⁸¹

Section 5 establishes an Accessibility Office within the Department of Postsecondary Education, Training, and Labour to address, develop and promote accessibility standards, among other functions.⁵⁸² Locating the Accessibility Office within the department in question provides continuity with inclusive education policy. The new office will be able to consolidate and build upon accessibility policies that the Department had already developed in the years before the *Accessibility Act*. An employee of the Department will be appointed as a compliance and

⁵⁷⁷ *Ibid.*

⁵⁷⁸ Charter, *supra* note 15.

⁵⁷⁹ Accessibility Act, *supra* note 20 at sec. 2(b).

⁵⁸⁰ New Brunswick Canada (News Release), *supra* note 569.

⁵⁸¹ Accessibility Act, *supra* note 20 at sec. 4.

⁵⁸² *Ibid* at sec. 5.

enforcement officer.⁵⁸³ In broad terms, this office will act as a liaison between the Minister and individuals with disabilities. Its primary function will be to convey the needs of students with disabilities and propose steps to achieving inclusive education in the province.⁵⁸⁴

The Act further provides in section 20 that there shall be an appointment or designation of inspectors by the Minister of Post-Secondary Education, Training and Labour to execute the purpose of the Act.⁵⁸⁵ Under the Act, an inspector has the power to “carry out any inspection, examination or test reasonably required to determine compliance with this Act.”⁵⁸⁶ Where a person or organization fails to comply with an order, “the Director may issue a notice in writing imposing on the person or organization an administrative penalty established by regulation to be paid to the Minister of Finance and Treasury Board within the time prescribed by regulation.”⁵⁸⁷ Any person or organization who fails to comply with the provisions of the Act commits an offence⁵⁸⁸ and is liable to pay a minimum or maximum fine “multiplied by the number of days during which the offence continues.”⁵⁸⁹ The *Provincial Offences Procedure Act*⁵⁹⁰ sets the fine that may be imposed.⁵⁹¹ Section 31(1) of the Accessible Act states, “Within 12 months after the commencement of this section and every five years after that, the Minister shall prepare and publish on the Department website a five-year strategic plan for achieving the goal of a more accessible New Brunswick by 2040.”⁵⁹²

⁵⁸³ *Ibid* at sec. 6.

⁵⁸⁴ *Ibid* at sec. 5.

⁵⁸⁵ *Ibid* at sec. 20.

⁵⁸⁶ *Ibid* at sec. 21.

⁵⁸⁷ *Ibid* at sec. 25.

⁵⁸⁸ *Ibid* at sec. 30(2).

⁵⁸⁹ *Ibid* at sec. 30(4).

⁵⁹⁰ Section 61 of the Provincial Offences Procedure Act states that “Where an Act creates an offence and states that a fine may be imposed in respect of that offence but does not state the amount of the fine that may be imposed, the fine imposed shall not exceed two hundred and fifty dollars.”

⁵⁹¹ Accessibility Act, *supra* note 20 at sec. 30(4)

⁵⁹² *Ibid* at sec. 31(1).

Through its definition of disability and other provisions of the *Accessibility Act*, the province recognizes that disability is not just an individual problem but rather a societal issue that demands government intervention. How this recognition will translate to a standard on inclusive education, further advancing the laws and policies already in place, remains to be seen. However, the Act at the very least will provide proactive inspection and enforcement that goes beyond the complaint-driven processes of the province's school board and human rights system.

3.3 Evaluation and Reports on Inclusive Education in New Brunswick

Now that we have reviewed key laws and policies New Brunswick has adopted to promote inclusive education of students with disabilities, it is important to analyze obstacles New Brunswick has faced in its efforts to implement those inclusive education policies, how they were dealt with, and what can be learned from these examples. So far, the New Brunswick government has conducted or commissioned, or been the subject of, six reviews since the passage of *Bill 85: Amendment to the School Districts Regulation – Schools Act (1992)* (Bill 85)⁵⁹³ to assess the implementation of inclusive education and other educational quality initiatives.⁵⁹⁴ These reviews have urged education officials to review the steps taken toward achieving the ambitions of law and policy, the problems that still need to be addressed, and the way forward for better performance.⁵⁹⁵ Continuous analysis, evaluation, and criticism have helped New Brunswick make progress in implementing inclusion policies.⁵⁹⁶

⁵⁹³ Bill 85, *supra* note 476.

⁵⁹⁴ Gordon L Porter & Angèle AuCoin, “Strengthening Inclusion, Strengthening Schools” (2012). Report for the Review of Inclusive Education Programs and Practices in New Brunswick Schools: An Action Plan for Growth.

⁵⁹⁵ AuCoin et al., *supra* note 466 at 4-5 (discussing four commissioned reviews to 2012; two other reviews have subsequently been conducted).

⁵⁹⁶ Mireille Leblanc, & Vienneau R., «Le Modèle de Livraison des Services en Adaptation Scolaire dans le Contexte de l'inclusion Scolaire au Nouveau-Brunswick Francophone» in N. Trépanier & M. Paré, eds, *Des Modèles De Services Pour Favoriser L'intégration Scolaire*, (Québec: Presses de l'Université du Québec, 2010) at 161.

As noted earlier, in 1986, the legislature of New Brunswick consolidated its commitment to inclusive education by unanimously enacting Bill 85, the first step towards inclusive education.⁵⁹⁷ This bill, which included reforms to the province's *Education Act*, mandated that all public schools enroll all children, including those with disabilities, in the same, integrated school.⁵⁹⁸ To further demonstrate its commitment to inclusive education and implementation of the initiatives in Bill 85, New Brunswick (or independent reviewers mandated to do this work) has undertaken program reviews six times in the past three and a half decades, focusing on assessing the inclusive education regime and recommendations for improving it.⁵⁹⁹

The first and second reviews were in 1990 and 1991.⁶⁰⁰ The Committee in charge of the 1990 review was the Special Committee on Social Policy Development,⁶⁰¹ while the Downey-Landry Commission⁶⁰² conducted the 1991 review.⁶⁰³ Just over a decade later, in 2006, Professor Wayne MacKay undertook the third review, resulting in the influential report titled *Connecting Care and Challenge: Tapping Our Human Potential - Inclusive Education: A Review of Programming and Services in New Brunswick*.⁶⁰⁴ Following that 2006 report, the Ministry of Education came up with a definition of inclusive education, which introduced the concept of the

⁵⁹⁷ AuCoin et al., *supra* note 466 at 4.

⁵⁹⁸ Gordon Porter, "Organization of Schooling: Achieving Access and Quality Through Inclusion" (1995) 25(2) Springer Nature. 299–309.

⁵⁹⁹ AuCoin et al., *supra* note 466 at 5. (The authors reference four reviews, with the last in 2012; subsequently, another review was conducted in 2021).

⁶⁰⁰ *Ibid.*

⁶⁰¹ The members of the Special Committee expressed their support for the school integration process and provided recommendations "concerning early childhood education, teacher training and certification, number and type of exceptionalities in a classroom, integrated services, and funding to adequately meet the needs of exceptional students." See *ibid* at 5.

⁶⁰² The Downey-Landry Commission also affirmed its support for integration and further recommended to the government of New Brunswick that "additional resources be allocated in the areas of counselling, resource and methods teaching, psychology, and speech therapy, and that the different government departments develop a protocol to meet the needs of students with severe behaviour disorders." See *ibid* at 6.

⁶⁰³ Government of Canada, "Historic Outlook" (2005) at 5-6. Accessed online at <https://www2.gnb.ca/content/dam/gnb/Departments/ed/pdf/K12/mackay/AppendixK.pdf>.

⁶⁰⁴ AuCoin et al., *supra* note 466 at 5.

“common learning environment” (CLE).⁶⁰⁵ CLE connotes that inclusion requires satisfying students’ diverse and variable learning needs in a common, inclusive classroom; it is not just about physically including students with disabilities in a regular class. Thus, CLE obliges teachers to understand their students’ diverse needs and appreciate their different learning strengths.⁶⁰⁶ The 2006 Mackay report also influenced the Human Rights Policy introduced in 2008 (discussed above), which provided human rights-based recommendations on how teachers and parents should accommodate students with disabilities.⁶⁰⁷ That is, the provincial human rights commission’s framework for handling complaints about discrimination on disability grounds, discussed earlier, was based in great part on the MacKay report.⁶⁰⁸ More on the MacKay report is provided below.

Gordon Porter and Angela Aucoin conducted the fourth review in 2012, six years after the MacKay report. While MacKay’s report provided recommendations on a systemic level addressing educators and other stakeholders, the 2012 report focuses on what can be done at the more fine-grained level of classrooms and individual teachers.⁶⁰⁹ It emphasizes the importance of building teachers’ capacity for inclusion in the effort to achieve inclusive education. The 2012 report influenced the globally recognized Policy 322 on Inclusive Education, introduced by the Ministry of Education in 2013.⁶¹⁰ As part of its goals, Policy 322 states that inclusive education is about acknowledging that every child can learn, even though their strengths and needs may vary.⁶¹¹ The policy, among other things, tasks officials with developing a universal and inclusive curriculum;

⁶⁰⁵ *Ibid* at 6.

⁶⁰⁶ *Ibid* at 5.

⁶⁰⁷ *Ibid*.

⁶⁰⁸ *Ibid* at 6.

⁶⁰⁹ *Ibid* at 4-5.

⁶¹⁰ *Ibid* at 5.

⁶¹¹ New Brunswick, “Department of Education and Early Childhood Development, Policy 322” (2013). 1 at 4. Accessed from <https://pdf4pro.com/amp/view/department-of-education-and-early-childhood-development-694372.html>.

tasks teachers with understanding students' diverse needs and being flexible in responding to them; and tasks all system participants with ensuring that education is delivered in an inclusive environment where every student feels "welcome, safe, and valued."⁶¹²

Leblanc and Vienneau state that New Brunswick's continued development in inclusive education has been facilitated by subjecting implementation to critical scrutiny and assessment.⁶¹³ Angela AuCoin et al., in their 2020 paper, *New Brunswick's Journey to Inclusive Education*,⁶¹⁴ discuss three further factors that have helped New Brunswick in its inclusive education journey. These are leadership, collaboration, and personalized instruction.⁶¹⁵ Through leadership, school administrators have worked with Education Support Teachers⁶¹⁶ and other staff members to implement instructional strategies to support students with diverse learning needs.⁶¹⁷ Through collaboration, teachers and school administrators have strengthened school-community connections by building on robust parent and community ties.⁶¹⁸ Also, there is a close working relationship between organizations, business owners, and disability advocacy groups who have served as reliable partners for teachers and students with special needs.⁶¹⁹ Additionally, teachers have partnered with other teachers through coaching, co-teaching, and peer support, to mention a few key activities. Implementation of the various laws and policies described so far has been promoted and sustained by these and other collaborative initiatives. As a result, teachers have been encouraged to understand that they are strategic actors in wider community effort to achieve

⁶¹² *Ibid.*

⁶¹³ LeBlanc, *supra* note 596.

⁶¹⁴ AuCoin, *supra* note 466.

⁶¹⁵ *Ibid* at 7.

⁶¹⁶ Before the introduction of Policy 322, some teachers specifically worked in special schools as teachers of students with special needs. After the introduction of Policy 322, most students, regardless of their needs or abilities, were now enrolled in regular schools. Policy 322 reframed the role of these teachers as Education Support Teachers (ESTs). ESTs serve as support to all classroom teachers through coaching, co-teaching, and co-planning, to name a few.

⁶¹⁷ AuCoin et al., *supra* note 466 at 8-10.

⁶¹⁸ *Ibid* at 10-11.

⁶¹⁹ *Ibid.*

inclusive education and have come to demonstrate leadership by identifying students' needs and finding the most suitable approaches to address these needs.

This paper will discuss in detail two of the six reviews conducted on Bill 85 and related commitments to inclusive education. These are the *Connecting Care and Challenge* Report in 2006⁶²⁰ and *Strengthening Inclusion, Strengthening Schools* in 2012.⁶²¹ These were chosen because they have significantly affected New Brunswick's journey to achieve inclusive education goals in harmony with the CRPD.⁶²² However, I conclude with some discussion of the two most recent reviews of inclusive education in New Brunswick, which bring a more critical perspective on the path the province has taken toward inclusion.

3.4 New Brunswick's Inclusive Education Reviews and Responses: A Closer Look

3.4.1 The Connecting Care and Challenge Report (2006)

As alluded to above, the Connecting Care and Challenge Report, also known as the MacKay Report, was conducted in 2005, 20 years after Bill 85 was passed.⁶²³ The Mackay Report was commissioned by the government of Bernard Lord, the 30th Premier of New Brunswick from 1999 to 2006.⁶²⁴ Lord's government acknowledged significant issues within the education system and committed to take action to implement changes. Professor Wayne Mackay, in his report,

⁶²⁰ Mackay, *supra* note 443.

⁶²¹ Porter & AuCoin, *supra* note 594.

⁶²² All five reviews conducted on Bill 85 have significantly impacted inclusive education in New Brunswick. However, the Mackay and AuCoin reviews were selected because they were conducted after Canada signed the CRPD, reflecting its provisions. The 2020 Korotkov review was also done after the passing of the CRPD; however, its focus is more on the inclusion and respect for students' sexual orientation and gender identity, which is not the primary focus of this thesis.

⁶²³ AuCoin et al., *supra* note 466 at 5.

⁶²⁴ Donald Desserud, "Bernard Lord." Published: June 2007. Online, <https://www.thecanadianencyclopedia.ca/en/article/bernard-lord>.

relying on a prior definition of inclusive education promoted by the Manitoba government, stated as follows:

Inclusion is a way of thinking and acting that permits individuals to feel accepted, valued and secure. An inclusive community evolves constantly to respond to the needs of its members. An inclusive community concerns itself with improving the well-being of each member. Inclusion goes farther than the idea of physical location, it is a value system based on beliefs that promote participation, belonging and interaction.⁶²⁵

The Mackay Report advocated for reforms to multiple legal regimes to promote inclusive education for all students, including persons with disabilities.⁶²⁶ Therefore, its suggestions go beyond including people with disabilities in regular schools. Instead, the report focused on ensuring that people with disabilities—and all students—feel included and accepted in their environment.⁶²⁷ This means that strategic actors, such as teachers and staff, are crucial in ensuring inclusive education.⁶²⁸ Mackay's recommendations included adding a preamble to the *Education Act*, to signal the significant role of inclusive education in achieving an inclusive education system and society.⁶²⁹

It is important to outline two key recommendations from the Mackay Report relating to the roles of various governmental officials and other key actors in the education system in advancing inclusive education. First, Mackay sought to promote the effective use of human resources.⁶³⁰ For instance, he emphasized the role of the Minister of Education in determining and mandating the skills needed by teachers in an inclusive education system. Further, he stressed the need for teachers and related professionals to acquire the necessary skills and resources to perform their

⁶²⁵ Mackay, *supra* note 2 at 23-24.

⁶²⁶ *Ibid.*

⁶²⁷ Mackay, *supra* note 443 at 5.

⁶²⁸ *Ibid.*

⁶²⁹ *Ibid* at 18.

⁶³⁰ Mackay, *supra* note 2 at 13.

duties effectively.⁶³¹ Additionally, he emphasized the importance of valuing the work of teachers to become competent at promoting inclusion.⁶³² Mackay also suggested developing a leadership development plan that would establish and carry out hiring procedures and policies to guarantee that those holding important positions are committed to implementing an inclusive education system that is both accountable and successful in their area of responsibility.⁶³³ Lastly, he proposed that the Minister of Education engage with certain universities to create a funded graduate-level degree in inclusive education.⁶³⁴

Second, Mackay's report proposed reforms to the way inclusive education is funded. Aucoin notes that funding of education in New Brunswick is now on a per-student basis, rather than block funding to schools (or 'special schools') effectively capping resources available for student accommodations.⁶³⁵ Mackay argued in this vein that funding should be focused on "special education, student services or adaptation scolaire, using a census or global allocation based on the total student enrollment."⁶³⁶ Further, he recommended to the Minister of Education that funding be focused on already existing initiatives like numeracy and literacy. Lastly, and critically, Mackay proposed funding for "targeted individuals to respond to the needs of students with low-incidence, high-cost disabilities."⁶³⁷

Porter and AuCoin's report notes that most of the districts did not have enough funding and proposed a re-examination of the funding models.⁶³⁸ According to Aucoin et al., the Ministry of Education's definition of inclusive education, which as indicated above relies on the concept of a

⁶³¹ *Ibid.*

⁶³² *Ibid.*

⁶³³ *Ibid.*

⁶³⁴ *Ibid.*

⁶³⁵ AuCoin et al., *supra* note 466 at 10.

⁶³⁶ Mackay, *supra* note 2 at 13.

⁶³⁷ *Ibid.*

⁶³⁸ Porter & AuCoin, *supra* note 594 at 22.

“common learning environment” (CLE), was part of the MacKay report’s recommendations that were implemented.⁶³⁹ CLE was a concept that reflected the views of key stakeholders.⁶⁴⁰ It emphasizes that inclusion should address the diverse and varying learning needs of all students, rather than just focusing on placing students with disabilities physically in a regular classroom.⁶⁴¹ CLE creates an obligation for teachers to understand their students’ diverse needs and recognize that a one-size-fits-all approach may not be suitable to meet them.⁶⁴²

3.4.2 Strengthening Inclusion, Strengthening Schools (2012)

While the 2006 MacKay Report aimed its recommendations mainly at the systemic level, the 2012 review, entitled *Strengthening Inclusion, Strengthening Schools*, focused on inclusion at the school and classroom levels.⁶⁴³ That is, the 2012 evaluation concentrated on actionable steps that might be implemented at the district, school, and individual classroom levels to better support teachers and children.⁶⁴⁴ As part of the process, the policies and practices of both the Anglophone and Francophone school districts in the province had to be thoroughly evaluated.⁶⁴⁵ The report's title explains its main findings: “that building capacity for inclusion can at the same time strengthen the school’s capacity to enhance learning success for all students.”⁶⁴⁶ The two main aims of the 2012 policy were to build on the 2009 definition of inclusive education in New Brunswick and to develop a comprehensive policy on inclusive education, which would eventually be known as Policy 322, as noted above.⁶⁴⁷

⁶³⁹ AuCoin et al., *supra* note 466 at 5.

⁶⁴⁰ *Ibid.*

⁶⁴¹ *Ibid.*

⁶⁴² *Ibid.*

⁶⁴³ *Ibid* at 6.

⁶⁴⁴ *Ibid.*

⁶⁴⁵ *Ibid.*

⁶⁴⁶ *Ibid.*

⁶⁴⁷ *Ibid.*

Inclusive education in New Brunswick is (and has been since 2013) supported by “Policy 322: Inclusive Education,” issued by the Department of Education and Early Childhood Development in 2013.⁶⁴⁸ The purpose of Policy 322 is to establish requirements to ensure New Brunswick public schools are inclusive.⁶⁴⁹ More specifically, Policy 322 was created to promote collaboration among teachers, school leaders, and families to ensure the active participation of all students, regardless of disabilities.⁶⁵⁰ The policy was designed to implement key recommendations of the 2012 report.⁶⁵¹ Policy 322 outlines the principles, goals, and strategies for fostering inclusive practices in schools across the province. It defines inclusive education as “the pairing of philosophy and pedagogical practices that allows each student to feel respected, confident and safe so he or she can participate with peers in the common learning environment and learn and develop to his or her full potential.”⁶⁵²

Policy 322 features six principles of inclusive education. First is the recognition that every student is inherently capable of learning irrespective of his physical and mental state.⁶⁵³ On this principle, it is unjustifiable to exclude persons with disabilities from learning on the grounds of disability. Second, the education curriculum should be universal and inclusive of all categories of students.⁶⁵⁴ Third, education should consider individual unique strengths and features to achieve success.⁶⁵⁵ Fourth, education should consider the diversity of students’ backgrounds, orientations and understanding.⁶⁵⁶ Fifth, education staff should be flexible and ready to adapt to change. Lastly,

⁶⁴⁸ *Ibid.*

⁶⁴⁹ *Ibid.*

⁶⁵⁰ AuCoin et al., *supra* note 466 at 7.

⁶⁵¹ *Ibid* at 5.

⁶⁵² *Ibid* at 2.

⁶⁵³ *Ibid.*

⁶⁵⁴ *Ibid.*

⁶⁵⁵ *Ibid.*

⁶⁵⁶ *Ibid.*

the learning environment should be accessible so that every student and staff member will feel safe and welcome.⁶⁵⁷

Policy 322 applies to “all schools and school districts within the public education system in New Brunswick.”⁶⁵⁸ It is the cornerstone of inclusive educational policy in the province. It reflects and amplifies inclusive education principles from the CRPD, the *Education Act*, the *Human Rights Act*, and (although it was not in place at the time Policy 322 was introduced) the province’s new *Accessibility Act*. Policy 322 addresses key topics, including UDL , the provision of personalized learning plans to accommodate learning diversities, and school-based education support services, to name a few. It represents the culmination of strategies and practices developed in individual school districts over previous decades⁶⁵⁹ and stands as the first directive to offer clear guidance on programs and procedures to every public school in the province, encompassing both the Anglophone and Francophone sectors.⁶⁶⁰

3.5 Further Strategies Adopted by New Brunswick in Achieving Effective Inclusive Education of Persons with Disabilities

New Brunswick’s model of inclusive education is rooted in providing students with an equitable and safe environment where they will feel they belong. In this section, I discuss a few key principles suggested by New Brunswick’s journey to achieve an inclusive education system for all students, including those with disabilities.

The government of New Brunswick has over time sought to address many problems associated with creating an inclusive education system for persons with disabilities. As noted, it

⁶⁵⁷ *Ibid.*

⁶⁵⁸ *Ibid* at 1.

⁶⁵⁹ *Ibid* at 7.

⁶⁶⁰ *Ibid.*

has done this through policy reviews where persons with disabilities, schools, communities, and others were consulted for their opinions on how to achieve inclusive education. Collaboration between the government, schools, and communities has helped the province develop innovative policies and practices in achieving inclusive education. As indicated above, New Brunswick has also adopted what is called the leadership model.⁶⁶¹ Under this, teachers who used to teach at special schools have moved to provide support to other teachers in general education environments.⁶⁶² In particular, Policy 322 created the role of ‘Education Support Teachers’ (EST),⁶⁶³ teachers with specialized training in inclusive education.⁶⁶⁴ Over time, many schools have employed ESTs to work as a team with other staff members to respond to the needs of students with special needs.⁶⁶⁵

New Brunswick has also adopted important approaches to the allocation of resources. As previously discussed, by law, the province funds schools in a manner that promotes inclusion. Funding is based on a per-pupil basis and aims to promote inclusion in schools (“neighbourhood schools”) established by the District Councils. Additionally, funds are invested in teachers who work in inclusive education environments. The government of New Brunswick has also allocated funds for assistive technology in schools, such as Braille, text-to-speech software, and specialist teaching equipment.⁶⁶⁶ To further increase accessibility, universal design concepts have been incorporated in new school building projects.⁶⁶⁷ Lastly, efforts are being made to eliminate barriers, such as installing ramps and elevators in older buildings.⁶⁶⁸

⁶⁶¹ AuCoin et al., *supra* note 466 at 7-8.

⁶⁶² *Ibid.*

⁶⁶³ *Ibid.*

⁶⁶⁴ *Ibid* at 11.

⁶⁶⁵ *Ibid.*

⁶⁶⁶ *Ibid.*

⁶⁶⁷ *Ibid.*

⁶⁶⁸ *Ibid.*

New Brunswick has adopted several principles to work towards an equal and inclusive education environment over the years. However, while the province has implemented strong laws and policies for inclusive education, it is also a work in progress and faces its own ongoing challenges, like inadequate funding and inadequate support systems for students with special needs.⁶⁶⁹

3.6 Recent Critical Reviews

The most recent review of New Brunswick's inclusive education policy was in 2021. Kimberly Korotkov led the report, *Moving Forward, From Policy to Practice: Implementing and Supporting Policy 322, Inclusive Education*.⁶⁷⁰ This report sought to ascertain whether Policy 322's intent had been fulfilled through its implementation, interpretation, and application in schools.⁶⁷¹ Korotkov's report highlights the need to update Policy 322, which has been in place for nearly a decade, to include considerations involving inclusion and respect for students' sexual orientation and gender identity.⁶⁷² She further indicates that despite many individuals acknowledging the positive progress of inclusive education in New Brunswick and implementing Policy 322 since its release in 2013, barriers remain, preventing the realization of the policy's full intent.⁶⁷³ Some of these significant barriers include inconsistency in communication and policy standards across schools and districts, conflict with other policies, and many more.⁶⁷⁴

In her report, Korotkov discusses problems relating to the common learning environment. She highlights cases where, despite support from the school district, students with special needs

⁶⁶⁹ Mackay, *supra* note 2 at 14.

⁶⁷⁰ Kimberly Korotkov, "Moving Forward, From Policy to Practice: Implementing and Supporting Policy 322, Inclusive Education," (2021). 2 at 5. Accessed from <https://www2.gnb.ca/content/dam/gnb/Departments/ed/pdf/K12/moving-forward.pdf>.

⁶⁷¹ *Ibid* at 8.

⁶⁷² *Ibid* at 31.

⁶⁷³ *Ibid* at 30.

⁶⁷⁴ *Ibid*.

have been inadequately supported and accommodated.⁶⁷⁵ She suggests that in such situations, “a continuum of learning supports must be explored, including personalized learning environment options,” and provides recommendations for achieving this.⁶⁷⁶ The recommendations are as follows:

1. Guidelines be developed for variation of the common learning environment as defined within Policy 322.
2. Guidelines be developed for personalized learning environments, including those for an interdepartmental personalized therapeutic response, following the Integrated Service Delivery (ISD) model. The term “therapeutic” must be clearly defined and viewed through a trauma-informed lens. Input should be sought from students, families, and community partners to ensure fidelity and integrity.
3. Districts apply a twin-track approach to personalized learning environments, that is, provide the necessary individualized supports while at the same time addressing any barriers that exist within the common learning environment, including instructional and intervention capacity within the school.⁶⁷⁷

In her report, Korotkov highlighted that New Brunswick has not fully implemented Policy 322. Some teachers and staff members have expressed concerns about their inability to meet the diverse needs of all learners.⁶⁷⁸ As a result, the province’s goal of integrating all students into a single education system has not been fully realized. She states that this goal can be achieved by developing a system based on New Brunswick’s history with inclusive education.⁶⁷⁹ Korotkov adds that inclusive education is “a collective responsibility; inclusion does not belong to one profession or team, one community partner or group, or even one department. It is the intersection of, and respect for, the lived perspectives and experiences of all communities that will propel New Brunswick to realize a flourishing inclusive education system.”⁶⁸⁰ Lastly, Korotkov proposes that

⁶⁷⁵ *Ibid* at 49.

⁶⁷⁶ *Ibid*.

⁶⁷⁷ *Ibid* at 50.

⁶⁷⁸ *Ibid* at 32.

⁶⁷⁹ *Ibid*.

⁶⁸⁰ *Ibid* at 58.

the Department of Education and Early Childhood Development invest in a strategy that will help the province transition from special schools to an all-inclusive model.⁶⁸¹ This statement by Korotkov also highlights that New Brunswick may still have special schools functioning and perhaps working towards the closure of all.

More recently still, Kelly Lamrock, Child and Youth Advocate in New Brunswick, in a report⁶⁸² published in May 2024, stated that there are more than five hundred students with special needs in New Brunswick who are being denied education and “sent home [. . .] in some cases, with no educational services at all.”⁶⁸³ Lamrock reports that the Department of Education and Early Childhood Development claims the reason behind this was that it was practicing “variation of the learning environment.”⁶⁸⁴ However, Lamrock argues that the department is not practicing “variation of the learning environment,” as stated in section 12(4) of the *Education Act*.⁶⁸⁵ Rather, the students in question are at home receiving partial or no education, which is illegal and has no legal authority backing it from the *Education Act*.⁶⁸⁶

⁶⁸¹ *Ibid* at 32.

⁶⁸² Kelly Lamrock, “A Policy of Giving up: How New Brunswick Schools Illegally Stopped Educating Hundreds of Children, and Why Government Needs to Protect Vulnerable Children” (2024). Available online: <https://static1.squarespace.com/static/60340d12be1db058065cdc10/t/66587e17a6cc860f5599b13a/1717075479618/A+Policy+of+Giving+Up+-+Partial+Day+School+Programs+-+CYA.pdf>.

⁶⁸³ Paul W. Bennett, “Inclusive Education is an Illusion in Post-Pandemic Schools. Too often, It’s Simply Giving Up on Kids” (2024). Available online at <https://thehub.ca/2024/09/23/paul-w-bennett-inclusive-education-is-an-illusion-in-canadas-post-pandemic-schools-too-often-its-simply-giving-up-on-kids/#:~:text=Lamrock's%20report%20revealed%20that%20in,being%20denied%20an%20education%20for>.

⁶⁸⁴ Lamrock clarifies that a variation of a learning environment means “the child is still in an environment where they are engaging in learning.” He continues to say, “If they are at home with no educational services, they are not in a learning environment. They are home. If you order a meal in a restaurant and they use chicken instead of beef, that is a variation. If they send you home with no food at all, that is not a variation. That is a refusal.” See Lamrock, *supra* note 682 at 9.

⁶⁸⁵ Sec. 12(4) states that “where an exceptional pupil is not able to receive a special education program of service in a school due to fragile health, hospitalization or convalescence, or a condition or need which requires a level of care that cannot be provided effectively in a school setting, the superintendent concerned may deliver the program or service in the pupil’s home or other alternative setting.” See *Education Act*, *supra* note 18 at s 12(4).

⁶⁸⁶ Lamrock, *supra* note 682 at 9. Kelly Lamrock, on December 9th 2024, reported again that seclusion rooms are being used illegally in New Brunswick schools to deal with children with disabilities. This indicates even more concerns with problems implementing New Brunswick’s planned inclusion model. See New Brunswick (News

In view of this, Lamrock made recommendations to the government, which include “creating a fund for appropriate services for children who cannot be accommodated in the common learning environment; better teacher training on inclusive practices and policies; better co-ordination between government departments to ensure a wider range of services to help high-needs children; and stronger oversight and reporting rules to keep districts from simply putting the most vulnerable children on never-ending partial days.”⁶⁸⁷ Lamrock has also sent a memorandum to school districts to offer clarity, consistency, and guidance on when students with special needs can be educated outside the common learning environment.⁶⁸⁸ Lamrock indicated that the office of the Child and Youth Advocate will review the situation after a year to evaluate any progress made.⁶⁸⁹

New Brunswick is often regarded as one of the best provinces for practicing inclusive education; however, it is important to note that the province faces challenges and is not perfect. AuCoin argues that creating an inclusive school is an ongoing process that is “never fully accomplished.”⁶⁹⁰ A question presented for reflection is whether the problems currently afflicting New Brunswick’s inclusive education programming reflect ideological rigidity around the meaning of inclusion and related failures to foster alternatives that deviate from the ideal of a common classroom or, alternatively, a more fundamental failure to adequately resource and support truly inclusive classrooms. The answer may involve a bit of both. Although the province

Release), “Advocate Calls for Overhaul of Seclusion Room Practices in New Brunswick Schools.” (9th December, 2024). Available online: https://www2.gnb.ca/content/gnb/en/news/news_release.2024.12.0494.html.

⁶⁸⁷ Sarah Wagner, “School Districts Illegally Stopped Educating Hundreds of Children, Advocate Reports” (2024). Available at https://www2.gnb.ca/content/gnb/en/news/news_release.2024.05.0228.html#:~:text=It%20is%20a%20policy%20of,for%20children%20in%20its%20care.

⁶⁸⁸ *Ibid.*

⁶⁸⁹ *Ibid.*

⁶⁹⁰ AuCoin et al, *supra* note 466 at 19.

is known as a leader in the closure of segregated schools, there may still be privately owned special schools for students with disabilities, which obviously are not funded by the government.⁶⁹¹

3.7 Conclusion

This chapter has explored some of the reasons the province of New Brunswick is recognized internationally as a leader in inclusive education, especially for students with disabilities. New Brunswick has many laws that are relevant to inclusive education, including its *Human Rights Act*, *Education Act*, and *Accessibility Act*. Each of these Acts has principled foundations that connect to the right to non-discrimination in the *Charter* as well as the many substantive social and economic rights – including the right to education – in the CRPD. Again, it is important to note that well before the passage and implementation of the New Brunswick *Accessibility Act*, the province was internationally recognized for its contribution to inclusive education. After evaluating the laws and policies on inclusive education in New Brunswick, it can be concluded that the province is worth Ghana’s attention as it works towards achieving inclusive education for students with disabilities.

New Brunswick has done a lot to pursue inclusive education, but it still has some distance to go. Notwithstanding, what can Ghana learn both from New Brunswick’s successes and its failures? In the next chapter, I will draw inspiration from New Brunswick’s legislation, policies, and implementation strategies to make recommendations to Ghana regarding future amendments to its *Persons with Disability Act*.⁶⁹²

⁶⁹¹ Ibid at 10.

⁶⁹² Act 715, *supra* note 2.

4.0 Introduction

Recognizing that unqualified access to quality education is a fundamental human right is essential to achieving a truly inclusive and welfarist society. However, students with disabilities still encounter significant challenges in accessing inclusive education in Ghana, as demonstrated in chapter 2. This raises the question of whether Ghana, as a democratic country, can claim to be a legitimate political entity that prioritizes its people's needs.

New Brunswick in Canada has taken positive steps despite being one of the smallest provinces in Canada, implementing ambitious policies to protect and uphold the educational rights of students with disabilities. The province is a leader in closing segregated schools and implementing reforms for inclusive education.⁶⁹³ Its legal and policy frameworks on protecting the rights of persons with disabilities and anti-discrimination generally highlight its commitment to continuously working towards creating inclusive educational opportunities for all students. The recent passage of the New Brunswick *Accessibility Act*⁶⁹⁴ further solidifies the province's position as a leader in inclusive education. With a population of approximately 80,000 persons, with over 35% of that population living with disabilities, New Brunswick's resilience and successful implementation of one of the most effective inclusive education policies in Canada demonstrates that other provinces in Canada and even other countries, such as Ghana, can successfully adopt laws and policies ensuring that the educational rights of students with disabilities are protected and successfully implemented. Notwithstanding, the province also encounters obstacles and shortcomings in executing inclusive education laws and policies. An example is the recent report

⁶⁹³ Mann et al, *supra* note 453 at 1731.

⁶⁹⁴ *Accessibility Act*, *supra* note 20.

by Lamrock that New Brunswick has approximately 500 students with special needs staying out of school because they cannot be accommodated.⁶⁹⁵ Ghana can draw lessons from these as it strives to meet the inclusive education objectives outlined in the CRPD.

The previous chapter analyzed the laws governing the education rights of students with disabilities in New Brunswick. This section will refer back to these policies to identify lessons that other countries, in particular Ghana, can learn from New Brunswick's laws and policies on achieving inclusive education. Finally, recommendations will be provided on how these lessons can be implemented to suit the Ghanaian context, potentially aiding in the development of laws and policies to better ensure inclusive education in Ghana. The underlying objective of advocating reform of Ghana's legal regime is to advance inclusive education by ensuring that education accommodates everyone irrespective of their socio-economic status, gender, race, or disability, to mention just a few prohibited and potentially intersecting grounds of discrimination.⁶⁹⁶ This implies that students with and without disabilities are able to learn in the same schools so that they will feel welcomed and valued in that environment.⁶⁹⁷ This is the idea of inclusion promoted by Article 24 of the CRPD, as discussed in the previous chapters. It is also the idea of inclusion promoted in the name of sustainable development. According to UNESCO, to achieve inclusive education, content, approaches, structures, and strategies must be changed and modified to enable the education of all children, including those with disabilities.⁶⁹⁸ This core imperative was also articulated in New Brunswick's MacKay Report, which was reviewed in the previous chapter. At the same time, committing to inclusion means more than choosing the right words. As New

⁶⁹⁵ Lamrock, *supra* note 682 at 14.

⁶⁹⁶ Awini, *supra* note 226 at 124.

⁶⁹⁷ *Ibid.*

⁶⁹⁸ SDGs, *supra* note 92.

Brunswick's own recent experience suggests, it also means committing resources to ensure that inclusion is attained and no student is left out.

I have identified seven issues Ghana may consider when reforming its legal and policy frameworks on students with disabilities' right to inclusive education. In the ensuing paragraphs, I analyze each of these issues.

4.1. Lessons Learnt from New Brunswick for Ghana Towards Achieving Inclusive Education

A. Establish Comprehensive Legislation, Regulatory, and Policy Frameworks for An Effective System of Evaluation and Compliance

To safeguard the educational rights of students with disabilities, it is important to establish comprehensive legislation that addresses the various challenges faced by them in equitably accessing education and that provides rights guarantees robust enough to address these challenges. Equally important is the enactment and implementation of strong enforcement mechanisms to ensure compliance with these laws. The Committee on the Rights of Persons with Disabilities (the Committee), in its General Comment No. 4 addressing obligations under article 24 of the CRPD, provides that “[a] comprehensive and co-ordinated legislative and policy framework for inclusive education must be introduced, together with a clear and adequate time frame for implementation and sanctions for violations.”⁶⁹⁹ It adds that these laws and policies should comply with international standards, have a clear definition of inclusion, and have accessible disability-inclusive monitoring mechanisms to track progress on the implementation of laws and policies on inclusive education.⁷⁰⁰

⁶⁹⁹ General Comment No. 4, *supra* note 17 at 19-20, see para 61.

⁷⁰⁰ *Ibid.*

As discussed in the previous chapter, New Brunswick has put in place legislation and policies (both under its *Human Rights Act* and *Education Act* – and now also its *Accessibility Act*) that ensure that the rights of persons with disabilities are protected. Also, the province has undergone five (or, counting, the recently-released report of the Child and Youth Advocate, six) reviews) since the amendment of New Brunswick’s *Education Act* to commit to inclusive education through Bill 85.⁷⁰¹ The province conducted (or in any case supported) these reviews to reflect on the various law reforms made in pursuit of inclusive education since the 1980s, identify remaining challenges related to inclusive education, and determine the necessary steps for achieving this goal.⁷⁰² This has also contributed in the closure of special schools in the province.⁷⁰³ Frequent analysis and assessment of provincial law and policies on inclusive education are among the key initiatives taken by New Brunswick in its journey to achieving inclusive education for all students, including those with disabilities.⁷⁰⁴

Relatedly, an important aspect of the recently passed *Accessibility Act* is its promoting ongoing evaluation of implementation of inclusion in education and other areas of public life by creating an Accessibility office to monitor the development and realization of accessibility standards within the province. The creation of a monitoring mechanism as well as enforcement mechanisms is integral to the realization of inclusive education for students with disabilities. Even if Ghana broadens its legislation, this statutory objective may be frustrated in the absence of an effective monitoring or enforcement body. Ghana can learn from New Brunswick and create an accessibility office with a mandate that encompasses inclusive education. For it to function, the government should ensure that the office is given appropriate resources and that the right people,

⁷⁰¹ AuCoin et al., *supra* note 466 at 4.

⁷⁰² *Ibid.*

⁷⁰³ Mann et al., *supra* note 453 at 1735.

⁷⁰⁴ MacKay, *supra* note 443 at 53.

with expertise in inclusive education and other aspects of disability rights, are appointed to administer it. The office can serve as a platform to address issues of inclusive education.

Additionally, there is a need to create a forum to address violations of educational rights and abuse of power. As discussed in the previous chapter, s.11(3) of New Brunswick's *Education Act* is used to check the potential abuse of the decision-making power granted to the superintendent.⁷⁰⁵ This section allows parents to appeal decisions made regarding the placement of students, including decisions around the provision of and content of Personalized Learning Plans. Ghana, on the other side, has no such provision in its Act 778 and Act 715. The 1992 Constitution is the only legal document that provides a forum to address human rights violations. Article 33(1) of the 1992 Constitution states that "where a person alleges that a provision of this Constitution on the fundamental human rights and freedoms has been or is being or is likely to be contravened in relation to him, then, without prejudice to any other action that is lawfully available, that person may apply to the High Court for redress."⁷⁰⁶ Legal guarantees of inclusive education are critical to achieving the principle of equality for everyone advanced in human rights legislation, Canada's *Charter*, and international agreements.⁷⁰⁷

B. Adaptation of Universal Design for Learning / Personalized Learning Plans

Another important aspect of working towards achieving inclusive education is the adaptation of Universal Design for Learning (UDL) / Personalized Learning Plans (PLP). State parties are urged by the CRPD Committee in its Comment 4 to adapt to the UDL approach. The Committee defines UDL as "a set of principles, providing teachers and other staff with a structure to create adaptable learning environments and develop instruction to meet the diverse needs of all

⁷⁰⁵ Accessibility Act, *supra* note 20 at s.11(3).

⁷⁰⁶ The 1992 Constitution, *supra* note 13.

⁷⁰⁷ MacKay, *supra* note 2 at 5.

learners.”⁷⁰⁸ It is important for teachers and staff to recognize that students have diverse learning styles and adapt differently to various concepts. Therefore, it is advisable for educators to create diverse curricula and assessments that cater to the needs of all students, particularly those with disabilities.

Also, in New Brunswick, the detailed breakdown of the various facets of disability outlined in its *Accessibility Act*⁷⁰⁹ ensures that the diverse nature of disabilities is considered when policies are formulated or put into action.⁷¹⁰ As a result, policies are tailored to meet the specific needs of each group. Additionally, as already noted, the New Brunswick *Education Act*⁷¹¹ emphasizes the development of PLPs by school systems to meet the diverse needs of students with disabilities. This proactive approach ensures that each student’s educational needs are effectively addressed. In New Brunswick, PLPs are based on students’ needs and strengths, not merely their disabilities.⁷¹² The role of PLPs in inclusion is assisted in part by requirements to continuously monitor students’ progress, guided by the overarching goal of supporting and accommodating those with special needs to participate in a common learning environment.⁷¹³ Ghana can learn from this and review its educational curriculum to reflect the personalized needs of students with special needs.

C. The Issue of Funding

The journey towards inclusive education is not only about making laws and policies; it also involves funding. Inadequate funding is a common barrier faced by (or created by) states, including

⁷⁰⁸ General Comment No. 4, *supra* note 17 at 9, see para 25.

⁷⁰⁹ *Ibid.*

⁷¹⁰ Government of New Brunswick, “Federal Disability Reference Guide” (2013). Available at https://www.canada.ca/content/dam/esdc-edsc/migration/documents/eng/disability/arc/reference_guide.pdf.

⁷¹¹ Education Act, *supra* note 19.

⁷¹² AuCoin et al., *supra* note 466 at 10.

⁷¹³ *Ibid.*

Canada and Ghana, in their quest to advance towards inclusive education.⁷¹⁴ To support the education of students with disabilities, the CRPD Committee has encouraged state parties to channel their resources from segregated schools to regular schools where inclusive education is practised.⁷¹⁵ By so doing, there will be enough resources to accommodate the needs of all students.

New Brunswick focuses on funding the education of students with disabilities in regular schools.⁷¹⁶ In New Brunswick, where support can be given to a student with a disability in a regular classroom, there is no need to seek special schools as the government does not fund private special schools. In the case of *New Brunswick Human Rights Commission v. New Brunswick (Dept. of Education)*, the court held that the complainant's decision to enrol the child in a private school had been a matter of personal preference, such that funding for his private education was not the duty of public officials.⁷¹⁷ The previous chapter closed with recent observations from New Brunswick's Child and Youth Advocate that suggest some students are not simply "preferring" alternatives to public school; rather they have been excluded. While New Brunswick's regime may be farther from perfect than its various awards and positive reviews suggest, the lesson to be drawn is arguably a familiar one: inclusion requires significant, dedicated resources. Ghana can improve its educational system by directing funds toward modifying regular schools to better accommodate students with disabilities rather than supporting both regular and special schools separately. By integrating students with and without disabilities in regular classrooms, the government can allocate sufficient resources to promote inclusive education within a common learning environment.

⁷¹⁴ General Comment No. 4, *supra* note 17 at 2, see para 4.

⁷¹⁵ *Ibid.*

⁷¹⁶ Mann et al, *supra* note 453 at 1737.

⁷¹⁷ Cudmore case, *supra* note 536.

D. Collaborative Efforts From Diverse Constituencies

Another significant factor that has aided New Brunswick in its commitment to inclusive education is its collaboration with people with disabilities, schools, and the community.⁷¹⁸ To achieve the goals of inclusive education for students with disabilities, the province has made significant and sustained efforts to involve a diverse array of actors, particularly parents, in making laws and policies affecting students with disabilities. For example, under s. 12(3) of the *Education Act*, the superintendent is required to consult with the parents of a student with a disability in making the decision on the best placement that fits the conditions of the child. S. 13 of the *Education Act* equally allows the parents to access teachers and principals to discuss the conditions of the students. This kind of collaboration of school administrators and parents creates an alliance where each side brings their perspective to the fore in providing solutions to the needs of students with disabilities.

The New Brunswick *Accessibility Act* advances and consolidates this kind of collaborative relationship. The purpose of the *Accessibility Act*, under s. 2, requires that persons with disabilities be involved in policymaking, recognizing that these persons are the best people to understand their unique challenges and how to address them.⁷¹⁹ It states the need to involve persons with disabilities “in the development and design of laws, policies, programs, services and structures that impact their full and effective participation in society on an equal basis with others.”⁷²⁰ Consulting persons with disabilities is crucial for understanding their needs and tailoring laws and policies to promote the enjoyment of their rights. Professor Mackay’s 2006 report contended that to achieve inclusive education, the walls between schools and communities

⁷¹⁸ Gordon Porter & David Towell, “Advancing Inclusive Education: Keys to Transformational Change in Public Education Systems” (2013). 2 at 8.

⁷¹⁹ *Accessibility Act*, *supra* note 20 at sec. 2.

⁷²⁰ *Ibid.*

need to be broken. Students with disabilities are from families and belong to communities.⁷²¹ It is important for those designing and implementing inclusive education policies in Ghana – as in New Brunswick - to consult with the communities to which students with disabilities belong, learn about their customs and beliefs, educate them about the importance of inclusive education, and make laws and policies that reflect these. This way, all communities and families will feel they belong, and persons with disabilities who may otherwise be doubly disadvantaged by disability, as well as cultural minority status, will have the confidence to pursue education.

Additionally, article 8 of the CRPD admonishes state parties to raise awareness in society.⁷²² This is to help challenge stereotypes, myths, and practices affecting persons with disabilities.⁷²³ Society should be educated to acknowledge and respect the rights of persons with disabilities and the significance of inclusive education.⁷²⁴ To ensure that inclusive education becomes a permanent initiative rather than a temporary project, the government of Ghana, in collaboration with teachers and other staff, parents, members of the society, and inclusive education and disability advocates, should conduct regular and intentional disability awareness campaigns⁷²⁵ and work together in all other areas.

E. Training of Teachers and Other Staff

Inclusive education is closely tied to teacher training. As explored above, according to the CRPD,⁷²⁶ States Parties must integrate students with and without disabilities in the same schools.⁷²⁷ This necessitates that teachers and staff must make significant adjustments to enable

⁷²¹ Mackay, *supra* note 2 at 5; see also *supra* note 443 at 188.

⁷²² CRPD, *supra* note 4 at art 8.

⁷²³ General Comment No. 4, *supra* note 17 at 16, see para 46.

⁷²⁴ *Ibid.*

⁷²⁵ Mann et al., *supra* note 453 at 1742.

⁷²⁶ CRPD, *supra* note 4.

⁷²⁷ *Ibid* at art. 24(2).

all students to thrive. Teachers at all levels of education should be trained to develop the skills necessary for adapting to inclusive education environments.⁷²⁸ This can be accomplished through well-structured modules and practical, hands-on learning experiences that will boost their confidence in addressing the diverse challenges associated with inclusive education.⁷²⁹

New Brunswick has effectively implemented this approach by transforming teachers who have specialized in supporting students with disabilities into Education Support Teachers (ESTs). ESTs now support regular classroom teachers with their specialized knowledge and experience obtained from special schools.⁷³⁰ Ghana can consider adopting a similar model of introducing ESTs into regular schools and ensuring that all teachers have adequate training and resources to support students with disabilities in the classrooms. In addition, tertiary institutions in Ghana can play a vital role by offering specialized courses or degrees to professionally train individuals in the necessary skills and knowledge to foster inclusive education. Schools can also make an effort to employ more teachers with disabilities. This will indirectly motivate students with disabilities to pursue education. Baker-Korotkov observes that effective leadership from the school administration team and teamwork among administration and staff are crucial to implementing inclusive education.⁷³¹ School administrators and leaders should ensure that the material and human resources required for achieving inclusive education for students with disabilities are readily available.⁷³² These approaches will improve classroom practices and help teachers engage all types of students effectively.⁷³³

⁷²⁸ General Comment No. 4, *supra* note 17 at 19, see para 71.

⁷²⁹ *Ibid.*

⁷³⁰ Mackay, *supra* note 443 at 7-8.

⁷³¹ Kimberly Baker-Korotkov, "A Constructivist Grounded Theory Study of Interconnected Frameworks of Health and Inclusive Schools." (2020) Doctoral dissertation. University of New Brunswick.

⁷³² *Ibid.*

⁷³³ Salifu, *supra* note 273 at 57.

F. Universal Design and Investment in Technology

The CRPD defines the term “universal design” in Article 2 as “the design of products, environments, programmes and services to be usable by all people, to the greatest extent possible, without the need for adaptation or specialized design.”⁷³⁴ The Committee states the lack of learning materials in accessible formats and languages is one of the major barriers to inclusive education.⁷³⁵ Article 4 of the CRPD states that resources should be allocated to research and develop technologies to assist people with disabilities in various educational settings, including schools and beyond. These technologies may include “information and communications technologies, mobility aids, devices, and assistive technologies designed specifically for students with disabilities.”⁷³⁶ State parties should work to convert educational materials into accessible formats and languages, along with establishing standards and guidelines for regulation. The CRPD emphasizes the importance of making these technologies available at an affordable price.⁷³⁷

Ghana should strive to ensure that technologies facilitating inclusive education are designed to accommodate all students, including those with disabilities. Products and services, especially those designed for students with disabilities, should not be priced in a way that they will not be able to afford them. This will foster a sense of belonging and contribute to the democratic values of Ghana and the world as a whole.

G. Transportation

Transportation is another crucial sector that needs attention regarding the movement for inclusive education. This is one of the challenges students with disabilities face in Ghana.

⁷³⁴ CRPD, *supra* note 3 at art. 2.

⁷³⁵ General Comment No. 4, *supra* note 17 at 8, see para 22.

⁷³⁶ CRPD, *supra* note 4 at art. 4(1)(g).

⁷³⁷ General Comment No. 4, *supra* note 17 at 11, see para 34.

Yigitcanlar et al. refer to challenges in accessing transport services as a ‘transport disadvantage.’⁷³⁸ They include persons with disabilities among those who experience this kind of disadvantage. Public transportation is crucial for persons with disabilities, at least where it is characterized by affordable fares, broad reach, and frequency of service availability.⁷³⁹ It is the most economical way to access essential activities and those that can improve one’s life.⁷⁴⁰ Unfortunately, public transportation in Ghana is not accessible. Almost all vehicles in Ghana are not equipped to accommodate persons with disabilities. This poses a serious challenge for students with disabilities who need to travel from their houses to schools. Schools and facilities cannot be accessible when the means of getting there, thus transport, is not accessible for students with disabilities. Parents, guardians, or other relatives of students with disabilities cannot always follow them to school and wait until they are close to help them find their way back home. To help persons with disabilities function independently in society, it is important to prioritize the travel and mobility needs of them by creating a safe, responsive, and inclusive public transport environment.⁷⁴¹ To address these problems and advance transport accessibility in Ghana, more action and cooperation are required from a range of stakeholders, including public and private transport drivers, ride-hailing businesses, governmental organizations, civil society groups, and wheelchair users.⁷⁴²

⁷³⁸ Tan Yigitcanlar, et al., *Understanding Transport-Related Social Exclusion: A Multidimensional Approach*, (2019). *Urban Policy and Research*, 37(1), 97–110. Available at <https://doi.org/10.1080/08111146.2018.1533461>.

⁷³⁹ Prince Kwame O. et al., “State of Public Transport Services to Ghana’s Disability Population: Lessons from Public Transport Operators in The Accra Metropolitan Assembly.” (2023) 7:1 *Social Sciences & Humanities Open*. 1 at 1.

⁷⁴⁰ *Ibid.*

⁷⁴¹ *Ibid* at 2.

⁷⁴² Techlabari, “Ride-Hailing Services in Ghana Struggle to Meet Wheelchair Accessibility Needs” (2023). Online: <https://newsghana.com.gh/ride-hailing-services-in-ghana-struggle-to-meet-wheelchair-accessibility-needs/>.

4.2 Conclusion

This chapter provides some recommendations critical to reforming Ghana's legal and policy frameworks to meet international standards on inclusive education and address the contemporary needs of students with disabilities. These recommendations are derived from the CRPD and New Brunswick's legal and policy provisions on students with disabilities' right to inclusive education. New Brunswick's global recognition for its responsive approach to the social and political participation of persons with disabilities makes it a valuable jurisdiction from which Ghana can learn.

Difficulties in fulfilling the demands of an increasingly diverse student body are not just a problem for one country; they are a challenge faced by the world. Hence, initiatives like the UN Sustainable Development Goals which seek to combat poverty, increase global well-being and otherwise make the world better than it is by 2030 have bearing on inclusive education.⁷⁴³ As a signatory to the CRPD, Ghana can begin by using existing resources to work progressively towards achieving inclusive education. In doing so, Ghana can also seek assistance, whether in terms of resources or knowledge, from other countries or international organizations. Both the private and public sectors can contribute to inclusive education for students with disabilities by investing financially, technologically, and in human resources promoting this important right.⁷⁴⁴

⁷⁴³ SDGs, *supra* note 92.

⁷⁴⁴ Samuel Frimpong Amoako, "Sixty Years of Deaf Education in Ghana (1957-2017)" (2019) 7:191 J Communication Disorders, Deaf Studies & Hearing Aids. 8. Online: <https://www.longdom.org/open-access-pdfs/sixty-years-of-deaf-education-in-ghana-19572017.pdf>.

5.0 Summary of the Chapters

This thesis presents a comparative analysis of the legal and policy frameworks concerning the right to inclusive education for students with disabilities in Ghana and the Canadian province of New Brunswick. As discussed, both Ghana and Canada are signatories to the CRPD⁷⁴⁵ and have legal and policy frameworks in place to address issues related to people with disabilities. The foregoing chapters examined legislative reforms made in both countries before and after the CRPD. In Ghana, legislation on inclusive education enacted before the CRPD was progressive for its time, but viewed against CRPD standards is insufficiently supportive of full inclusion and moreover has been ineffective in its implementation, for reasons outlined in Chapter 2. The province of New Brunswick also made important reforms relating to inclusive education prior to the coming into force of the CRPD, and in contrast to Ghana, subsequently became known for its exemplary laws and policies regarding inclusive education for people with disabilities. I have argued that New Brunswick has over the years developed a better approach to students with disabilities' right to inclusive education, more consistent with the norms advanced in the CRPD, even before the enactment of its recent *Accessibility Act*. The *Accessibility Act* has added to the province's existing legal instruments already of value in guaranteeing the right to inclusive education. However, recent reports suggest that even New Brunswick has a long way to go to realize the model of full inclusion it has embraced in law.

The main finding of this thesis is that Ghana continues to base its education policy on a segregation model that negatively affects the right to education for students with disabilities. In Chapter 2, I noted that Ghana adopts a segregated model of disability in defiance of the CRPD,

⁷⁴⁵ CRPD, *supra* note 4.

which, in its comment, thoroughly endorses inclusive education, meaning education for all in the same school environment. This provides an answer to the question posed in the title of the thesis, asking whether the laws in Ghana protecting students with disabilities' right to education are genuine or merely a façade. My research indicates that Ghana tends more towards segregation than inclusive education for students with disabilities and that this approach does not effectively meet the provisions of the CRPD and the needs of the people – many of whom are excluded from education altogether. For persons with disabilities to be included in the community and to enjoy equal access to education, an inclusive approach is clearly better than segregation.

Chapter 2 suggested the need for amendment of Ghana's existing laws to reflect the CRPD's provisions on inclusive education. Implementation was another major issue. Even where existing laws and policies on education show some promise, they are not enforced properly to accommodate students with disabilities -- either in regular or even existing "special" schools. Chapter 3 examined the alternative landscape of New Brunswick's legal regime as relates to inclusive education. It found that the province had robust provisions protecting the right to education of students with disabilities even before the enactment of its *Accessibility Act*. The province's *Education Act* and several related policies from its Ministry of Education feature important protections promoting inclusive education of persons with disabilities. The *Accessibility Act* further solidifies these protections. In particular, New Brunswick's laws and policies commit to accommodating all children in a common learning environment through a variety of concrete approaches like Personalized Learning Plans. While there seems to be some residual (and potentially quite problematic) tolerance for "alternative" learning environments, those alternatives are to be a last resort, narrowly limited to as short a time as possible until inclusion in the common classroom environment is enabled.

In Chapter 4, I identified seven main points Ghana can learn from New Brunswick, the CRPD, and other international organizations to reform and refresh its laws and policies on education so that it will be brought into line with human rights legislation.

5.1 Critical Disability Theory

In chapter one, I introduced three models of disability: the medical, social, and critical disability theory models. The medical model conceptualizes disability as a health condition and an individual problem rather than a societal one.⁷⁴⁶ According to the social model, social barriers, in interaction with diverse individual conditions, determine who is disabled and what counts as disability. Critical Disability Theory (CDT) goes beyond the social model and focuses on exposing and challenging power dynamics.⁷⁴⁷ It takes a radical approach to addressing the power imbalances experienced by people with disabilities. CDT advocates for a shift from viewing disability as an individual problem to understanding it as a systematic barrier caused by social inequities.⁷⁴⁸ In the context of inclusive education, CDT emphasizes the need for law and policy reforms to eliminate these barriers and inequities.⁷⁴⁹ Further, CDT reminds us that law and policy mean little without accompanying investments of (meaning, in this context, redistribution of) power and resources. The goal is to promote a culture of inclusivity and respect within educational systems.⁷⁵⁰ With that being said, CDT reflects the CRPD's goal of having all students study in an inclusive environment.

CDT has been a useful tool for analyzing Ghana's legal framework, particularly in highlighting the power imbalances written into the provisions of Act 715. The gaps in the provisions of Act 715 indirectly impact its implementation and place persons with disabilities in a

⁷⁴⁶ Simo, *supra* note 40 at 213.

⁷⁴⁷ Berghs et al., *supra* note 5 at 9.

⁷⁴⁸ Erin, *supra* note 78 at 78.

⁷⁴⁹ *Ibid.*

⁷⁵⁰ *Ibid.*

disadvantaged position. These provisions also grant broad discretionary powers to certain departments such as the Ministry of Education, Ministry of Health, and Ministry of Social Welfare.

An example of such is found in Article 20(1) of Act 715, which provides as follows:

A person responsible for admission into a school or other institution of learning shall not refuse to give admission to a person with disability on account of the disability unless the person with disability has been assessed by the Ministry responsible for Education in collaboration with the Ministries responsible for Health and Social Welfare to be a person who clearly requires to be in a special school for children or persons with disability.⁷⁵¹

Act 715 grants broad discretion to government authorities to “place” students with disabilities in a school, including an “alternative” school, without taking account of the human rights-based importance of inclusion or even the best interests (including the needs and circumstances) of the student in question. The provision gives power to the Minister of Education to place students with disabilities in ‘special schools’ based on an implicitly medical model of what is “required”.⁷⁵² This reflects segregation, which is widely practiced in ways that stigmatize and disadvantage people with disabilities in Ghana.

5.2 Materials Used and Limitations

The materials used in developing the arguments for this thesis were laws, policies and secondary sources addressing the education of students with disabilities in Ghana and New Brunswick. For Ghana, laws such as the *Constitution of the Republic of Ghana*,⁷⁵³ the *Person with Disabilities Act of Ghana, 2006*,⁷⁵⁴ and the *Ghana Education Act, 2008*,⁷⁵⁵ as well as secondary sources and data gathered from a similar study on persons with disabilities and inclusive education,

⁷⁵¹ 1992 Constitution, *supra* note 13 at art. 20(1).

⁷⁵² Act 715, *supra* note 3 at sec. 18(2).

⁷⁵³ 1992 Constitution, *supra* note 13.

⁷⁵⁴ Act 715, *supra* note 3.

⁷⁵⁵ Act 778, *supra* note 264.

were used for this research. Laws relied on in analyzing the situation in New Brunswick were mainly the *Canadian Charter of Rights and Freedoms*,⁷⁵⁶ the *New Brunswick Human Rights Act*⁷⁵⁷, the *New Brunswick Education Act*,⁷⁵⁸ and the *New Brunswick Accessibility Act*,⁷⁵⁹ together with other secondary materials on inclusive education of persons with disabilities. At the level of international law, I relied on the CRPD as a benchmark to assess the inclusivity of the education systems for students with disabilities in Ghana and Canada (New Brunswick).

I also reported on leading case law relating to inclusive education in Canada. However, I did not find any comparable case law on inclusive education, especially related to students with disabilities in Ghana. Specifically, at the time of this research, no published judicial decision addressing inclusive education as a human right was issued from Ghana.⁷⁶⁰ A few cases on interpretation of discrimination and forum for redress of human rights violations in Ghana were discussed.

5.3 Scope of the Research

This inquiry into inclusive education rights was limited to the rights of students with disabilities between the ages of 3 to 18 or otherwise qualifying for universal or purportedly universal primary and secondary education.⁷⁶¹ This age range was chosen because it is mostly the school-age nursery to senior high school students. This research has addressed persons with disabilities in Ghana whose right to education has been and continues to be violated due to various barriers. The intended audience has been persons with disabilities, law and policymakers in Ghana,

⁷⁵⁶ The Charter, *supra* note 15.

⁷⁵⁷ Human Rights Act, *supra* note 18.

⁷⁵⁸ Education Act, *supra* note 19.

⁷⁵⁹ Accessibility Act, *supra* note 20.

⁷⁶⁰ As of the time of this research, GHALII had no officially published court case regarding the inclusive education of students with disabilities or the interpretation of provisions concerning the education of students with disabilities.

⁷⁶¹ Education Policy and Data Centre, “National Education Profile 2018 Update” (2018). Available online : https://www.epdc.org/sites/default/files/documents/EPDC_NEP_2018_Ghana.pdf.

school administrators and staff, parents, NGOs, the public, and readers interested in human rights. I seek the indulgence of Ghana's law and policy makers to consider seriously the amendment of Act 715 to better reflect the provisions of the CRPD. I believe this will be a starting point for promoting and protecting the education rights of persons with disabilities. Ghana needs legislation that is clear about the scope, application and enforcement of the rights of students with disabilities to inclusive education. Only then will the government know the kind of interventions it must provide. It will also help persons with disabilities to be able to challenge their rights when those are being infringed. Further, I have suggested a set of strategies to guide implementation of inclusive education laws, modeled after the strategies adopted in New Brunswick.

5.4 Challenges of the Research

Finding current statistics on the number of persons with disabilities in Ghana and on access to education among persons with disabilities was challenging. Again, I could not find any official or published court cases in which a student with a disability asserted their right to equitably access education or argued infringement of that right by a school, the government, or any other authority. Additionally, it was almost impossible to find court decisions that dealt directly with the interpretation of the legal concepts of most relevance to such claims, like discrimination, disability, inclusive education, or any provisions of Act 715. Another challenge of this research is the limited research materials on disability other than physical disability in Ghana. There is little scholarship or research relating to invisible disabilities in Ghana, as relates to inclusive education or otherwise. Lastly, I concluded that Ghana lacks a legal framework dedicated to enforcing the educational rights of students with disabilities. It is true that Act 715 provides laws and even sanctions for violating its provisions; however, it does not specify where and how to enforce these provisions.

So far, Article 33 of the 1992 Constitution is the only provision that states that address this. It states that:

Where a person alleges that a provision of this Constitution on the fundamental human rights and freedoms has been or is being or likely to be contravened in relation to him, then, without prejudice to any other action that is lawfully available, that person may apply to the High Court for redress.⁷⁶²

With regard to New Brunswick, there was a significant literature regarding the province's human rights and education laws and policies as these relate to inclusive education, however there was (unsurprisingly) no literature or secondary material on the province's new *Accessibility Act* at the time of this research.

5.5 What Lies Ahead? How Might This Research Inform Future Work?

When I started this research, I had a few questions in mind: Is my engagement with inclusive education in Ghana going to end with the submission of this thesis? How will law or policymakers come across it? With the help of the internet and social media, the world is becoming a smaller, global village. I aim to promote the inclusion of persons with disabilities in my community, primarily through education. To achieve this, I plan to utilize social media platforms like LinkedIn, podcasts, and YouTube to raise awareness about what disability rights entail with regard to education and the wider significance of disability inclusion.

5.6 Conclusion

Professor Mackay contends that inclusive education is to be desired as it is the best approach to unlocking the potential of all students and leveraging their diversity for the betterment

⁷⁶² 1992 Constitution, *supra* note 13 at art. 33.

of all of society.⁷⁶³ Inclusive education is an approach and not a place.⁷⁶⁴ It is a child-centred and person-centred philosophy and an approach that recognizes that every person has something positive to contribute to society and can reach their full potential if given appropriate opportunities and support.⁷⁶⁵ Ghana should not just act as “human rights angels” who only sign on to international treaties like the CRPD as a kind of political posturing, hoping to gain benefits that might be attached to recognition as a respecter of human rights. Rather, the state should make an effort to make these and related laws and policies on inclusive education of students with disabilities a reality and just like New Brunswick, it should make inclusion a ‘norm’ where everyone feels belonged.⁷⁶⁶

This thesis aims to contribute to social movement advocacy for persons with disabilities and to ensure that education is available to them, whether formal or informal, to enable them to live as successfully as everyone else. It is intended to be a resource for the development of policies that are focused on and beneficial to persons with disabilities. It adds to the body of knowledge and human rights scholarship advocating the urgent need to amend Act 715 to conform with the CRPD’s provisions on inclusive education of students with disabilities.⁷⁶⁷ ‘Disability is not inability’⁷⁶⁸ sounds like a cliché, but indeed, having a disability does not disable your whole being. Disability can happen to anybody at any time, and it is not something to hide or be ashamed of, shy away from, or give up on life because of. We are living at a time when persons with disabilities

⁷⁶³ Mackay, *supra* note 443 at 5.

⁷⁶⁴ *Ibid.*

⁷⁶⁵ *Ibid.*

⁷⁶⁶ Mann et al., *supra* note 453 at 1736.

⁷⁶⁷ There are advocacy groups in Ghana advocating for an amendment of Act 715. One of these key groups is the National Council on Persons with Disability (UCPD). UCPD in 2020 sent a bill titled the ‘Persons with Disability Amendment Bill, 2020’ to Parliament. The Memorandum of the Bill provides that the proposed bill is “to domesticate and bring into effect the CRPD into Ghana’s legal framework and to domesticate the sustainable development goals.”

⁷⁶⁸ United Nations, “Disability is Not Inability,’ Says Ban, Urging Equal Rights for All to Achieve SDGs.” Available online: <https://www.un.org/en/desa/%E2%80%98disability-not-inability%E2%80%99-says-ban-urging-equal-rights-all-achieve-sdgs>.

in Ghana and beyond are standing up, owning their uniqueness, and showing the world what they are capable of.⁷⁶⁹ Their unique abilities can benefit their nations through education. As Porter states, ‘[i]t is past time for educational leaders and policymakers to bite the bullet and purge our educational system of segregation and discrimination.’⁷⁷⁰

⁷⁶⁹ An example of this was seen in the passing of Act 715 in 2006 after a long struggle by the Ghana Federation of the Disabled (GFD) and a few other civil society organizations to push the government of Ghana to enact a law to enforce disability rights. This is why there is a need for more awareness creation and advocacy movements to advocate for better laws and policies for persons with disabilities to enjoy human rights and freedoms without social limitations.

⁷⁷⁰ Gordon Porter, “Making Canadian Schools Inclusive: A call to action” (2008) 48:2 Canadian Education Association. 1 at 2.

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