

COVID-19 and the inclusion of learners with disabilities in basic education in South Africa: A critical analysis

*Serges Djoyou Kamga**

Professor of Human Rights Law, Thabo Mbeki African School of Public and International Affairs, University of South Africa
<https://orcid.org/0000-0003-3583-055X>

Summary: *This article examines the extent to which basic education, which is compulsory under international law, was inclusive of learners with disabilities during the COVID-19 pandemic. To this end, it examines measures taken by the government to ensure the continuity of basic education and the extent to which these measures are inclusive of learners with disabilities. It argues that moving education to online platforms, and conducting classes via radio and television are not accompanied by related reasonable accommodation measures to ensure the inclusion of learners with disabilities. Among others, study material and numerous resources, online platforms and media are not in accessible formats, and learners with disabilities do not have access to data or internet broadband. In addition, the parents of these learners with disabilities are not trained to assist their children to study from home. The exclusion from school of learners with special needs is also characterised by a limited number of special schools in the country. In making its case, the article relies on South African and foreign jurisprudence on equality and inclusive education to inform the analysis. Ultimately the article finds that learners with disabilities are not included in the education system*

* Lic-en-droit (Yaoundé II) LLM LLD (Pretoria); dkamgsa@unisa.ac.za or sergesalaindk@gmail.com

in the time of COVID-19. It explores general lessons learned during the pandemic which could be considered as an opportunity to re-think how emergency education planning can be inclusive of children or learners with disabilities in the future. While the discussion focuses on South Africa, lessons learned apply across Africa where persons with disabilities generally are marginalised.

Key words: *COVID 19; disability rights; basic education; inclusive education*

1 Introduction

The COVID-19 pandemic poses one of the severest global challenges that the world has in recent times experienced. To deal with this crisis, empowered by the South African Disaster Management Act 57 of 2002 (DMA), the executive on 15 March 2020 declared a state of disaster which paved the way for the national lockdown declared on 23 March 2020. This extraordinary measure led to the limitation of gatherings, a partial or total shutdown of businesses and, importantly, the complete closure of schools. The latter became even more necessary when it emerged that the children of the first person who tested positive for the Coronavirus attended a school in Hilton, KwaZulu-Natal which had to shut down, although those exposed children tested negative.¹ Similarly, another school based in Sandton, Johannesburg also closed its doors for a day after it appeared that one of its staff members had been in contact with a person who had tested positive for the virus.² Therefore, the closure of schools was unavoidable.

However, given the significant role of education in fostering human development,³ the closure of schools was mitigated with a shift to online education. The government through the Department of Basic Education (DBE) took several measures to ensure the continuity of schooling through television, online methods and e-learning solutions. This approach raises questions as to the inclusiveness of these methods. In other words, to what extent is online based education in time of COVID-19 inclusive of learners with disabilities? This question is important because South Africa is

1 B Macupe 'Ramaphosa closes schools as country grapples with Coronavirus' *Mail & Guardian* 15 March 2020, <https://mg.co.za/article/2020-03-15-ramaphosa-closes-schools-as-country-grapples-with-coronavirus/> (accessed 25 June 2020).

2 As above.

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

party to the International Covenant on Economic and Social, Cultural Rights (ICESCR), the African Charter on Human and Peoples' Rights (African Charter), the African Charter on the Rights and Welfare of the Child (African Children's Charter) and the United Nations (UN) Convention on the Rights of Persons with Disabilities (CRPD). These instruments provide for a compulsory right to basic education to all without discrimination, this right being enshrined in the South African Constitution as well as numerous policy instruments. It is against this backdrop, without engaging with the legality of the lockdown regulations, that this article will explore the extent to which learners with disabilities are included in online schooling which characterises education in general and basic education in particular during the time of COVID-19. Its focus is on basic education which is free, compulsory and to be realised immediately under international law despite the ongoing COVID-19 pandemic circumstances.

As part of assessing the inclusion of learners with disabilities in South African basic education during the COVID-19 pandemic, the article critically examines legal and policy documents as well as state practice pertaining to basic education. Among the criteria used to determine the inclusiveness of education is whether it is discriminatory and whether it provides learners with disabilities with adequate resources for learning as compared to their peers with no disabilities. In this exercise, the article examines the measures taken to give effect to the right to basic education, assesses whether these measures consider the plight of learners with disabilities, with special attention to the nature of reasonable accommodation measures adopted, if any. It then proceeds to examine the plight of learners with special needs, and the extent to which parental support is conducive to ensuring that all learners enjoy the right to basic education without discrimination. In the process, challenges experienced to implement an inclusive education are examined and general lessons for the future explored with COVID-19 considered as an opportunity to re-think how emergency education planning for the future can be inclusive of learners with disabilities. In making its case, the article also relies on South African and foreign jurisprudence on equality and inclusive education to inform the analysis.

The article is divided into five parts including this introduction. The second part of the article examines the legal, policy and theoretical frameworks that underpin inclusive education in South Africa. The third part demonstrates the exclusion of learners with disabilities from schools during the implementation of online learning measures during COVID-19 where neither reasonable accommodation measures were provided for learners with disabilities nor parental

and professional support made available for learners with special needs. The fourth part of the article draws lessons for the future. To this end, it examines systemic deficits in South Africa's 'inclusive' education system. It offers recommendations to remedy the situation and prepare for future pandemics. The fifth part summarises the article in the form of concluding remarks.

2 Inclusive education in South Africa: Legal, policy and theoretical frameworks

This part presents the legal, policy and theoretical frameworks of inclusive education in South Africa. As far the legal and policy framework is concerned, it demonstrates that the Constitution provides for the right to education for 'everyone' and that many policies were adopted to give effect to this constitutional provision. As for the theoretical framework, the part shows that South Africa espouses inclusive education in mainstream as well as in special schools. The part is divided into two main sections. The first part explores the legal and policy framework for inclusive education and the second part examines the theoretical framework.

2.1 Legal and policy framework

Under article 24 of CRPD, state parties, including South Africa,

recognise the right of persons with disabilities to education, and shall ensure that ... [they are] not excluded from the general education system on the basis of disability, and that children with disabilities are not excluded from free and compulsory primary education, or from secondary education, on the basis of disability; and receive the support required, within the general education system, to facilitate their effective education.

Although the South African Constitution was adopted before CRPD, inclusion in mainstream schools was already captured by the drafters. In other words, it provides for inclusive education in section 29 as follows:

- (1) Everyone has the right
 - (a) to a basic education, including adult basic education; and
 - (b) to further education, which the state, through reasonable measures, must make progressively available and accessible.
- (2) Everyone has the right to receive education in the official language or languages of their choice in public educational institutions where that education is reasonably practicable.

At the centre of this provision is the notion of 'everyone'. This is a clear prohibition of discrimination in the provision of the right to education. This means that everybody, including persons with disabilities, is entitled to the right to basic education as well as other forms of education. The inclusive feature of section 29 of the Constitution on the right to education was clarified by the Constitutional Court in *Ex parte Gauteng Provincial Legislature* in these terms:⁴

Section 32(a) [of the 1993 interim Constitution, now section 29(1) of the 1996 Constitution] creates a positive right that basic education be provided for *every person* and not merely a negative right that such a person should not be obstructed in pursuing his or her basic education.

Put differently, the government is required to provide basic education to all including learners with disabilities. This entails making all resources available for the realisation of this right. Boezaart explains this as follows:⁵

In the context of disability, section 29(1) obliges the government to provide basic education (including adult basic education) to *everyone*. The unqualified and absolute nature of the right requires that the state implement measures and make budgetary allocations to give effect to the right as a matter of priority.

While Kamga also recognises the sanctity of the right to education for everyone, he notes that

any limitation of this right can only be justified under section 36 of the Constitution which clearly provides that the rights in the Bill of Rights can be limited only in terms of law of general application to the extent that the limitation is reasonable and justifiable in an open and democratic society.⁶

This means that any limitation of the right to education and basic education is subject to very strict conditions.

To ensure that the constitutional promise of inclusive education becomes a reality, the government adopted numerous policy and legislative measures, including the White Paper on Education and Training,⁷ the White Paper on an Integrated National Disability

4 *Gauteng Provincial Legislature in re: Gauteng School Education Bill of 1995* 1996 (3) SA 165 (CC) para 9 (my emphasis).

5 T Boezaart 'A constitutional perspective on the rights of children with disabilities in an educational context' (2012) 27 *SA Public Law* 458.

6 SD Kamga 'Inclusion of learners with severe intellectual disabilities in basic education under a transformative constitution: A critical analysis' (2016) 49 *Comparative and International Law Journal of Southern Africa* 37; sec 36 of the South African Constitution.

7 Department of Education 1995, <http://www.education.gov.za/LinkClick.aspx?fileticket=855fT9w3A2U%3D&tabid=191&mid=484> (accessed 24 July 2020).

Strategy,⁸ the South African Schools Act,⁹ White Paper 6: Special Needs Education, Building an Inclusive Education and Training System¹⁰ and the 2015 White Paper on the Rights of Persons with Disabilities.

All these measures were adopted to underline the inviolability of the right to equality as far as access to education is concerned. They are a clear signal that the right to education for all, including persons with disabilities, cannot be compromised. After establishing that there is a legal and policy framework to ensure an inclusive education in the country, it is important to explore which theory underpins the normative framework.

2.2 Theory of inclusive education in South Africa: Reliance on inclusion in mainstream and special schools

Under White Paper 6 on inclusive education, which is the core policy instrument for equal access to education in South Africa, inclusive education can take place in mainstream or in special schools.

2.2.1 Inclusion in mainstream education

The notion of inclusive education highlights the need to educate all learners in the same schools. Dukes and Lamar-Dukes define inclusive education to mean that all students should be admitted to school without discrimination based on disabilities, but with the much-needed support as far as students, parents, educators and families are concerned to foster their education.¹¹ In other words, all learners of the same grade should be included in the same classroom without considering their background or specificities, and any disability should be regarded as an element of human diversity. In this context, teachers should be trained, with the curriculum adjusted to cater for all learners in the classroom.

This inclusive approach is well catered for by White Paper 6 which unambiguously recognises diversity in the classroom and underlines the need to provide appropriate support needed for all learners to succeed. This approach is informed by the

8 Office of the Deputy President 1997, http://www.gov.za/sites/www.gov.za/files/disability_2.pdf (accessed 24 July 2010).

9 South African Schools Act 84 of 1996.

10 Department of Education 2001.

11 C Dukes & P Lamar-Dukes 'Special education: An integral part of small schools in high schools' (2006) 89 *The High School Journal* 4.

acceptance of principles and values contained in the Constitution ... human rights and social justice for all learners; participation and social integration; equal access to a single, inclusive education system; access to the curriculum, equity and redress; community responsiveness; and cost-effectiveness.¹²

To ensure 'equal access to a single, inclusive education system', White Paper 6 creates 'full-service schools' or 'mainstream' schools that accommodate learners with different needs within a school district.¹³ These schools are equipped to ensure the inclusion of learners with disabilities with strong attention to reasonable accommodation measures necessary for their success.¹⁴ In these schools, learners with different disabilities will be educated together with those without disabilities. The success of these learners will depend on the adequacy of support provided to overcome learning challenges.¹⁵ One way around this is to adopt the universal learning design which caters for the preparedness of non-teaching staff, 'teachers, planning, designing curriculum and teaching and assessing students to meet various needs in the classroom'.¹⁶ Capturing the need to include all learners in the mainstream education, the UN Special Rapporteur on Disability Rights writes:¹⁷

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

Outside South Africa, the idea of 'full service school' echoed by White Paper 6 was clarified by the European Court of Human Rights in the *Sofia* case.¹⁸ In this case it was held that the equal right to education of learners with disabilities is violated if the school does not offer an appropriate or favourable environment for their education. This

12 Department of Education 'Education White Paper 6: Special needs education building an inclusive education and training system' Statement by the Minister of Education (2001) 5.

13 White Paper 6 (n 12) 8.

14 Department of Basic Education 'Guidelines on Full Service Inclusive Schools' (2010) 7.

15 Department of Basic Education (n 14) 10.

16 Kamga (n 6) 37.

17 Report of the United Nations High Commissioner for Human Rights on progress in the implementation of the recommendations contained in the study on the human rights of persons with disabilities (2007) [A/HRC/4/75] para 36.

18 Case 13789/06, decision of 18 May 2007.

means that the mainstream setting should not benefit only learners without disabilities.¹⁹ In a similar vein, the failure to implement the 'full service' school was declared unlawful by the European Committee of Social Rights in the Bulgarian case of *Mental Disability Advocacy Centre v Bulgaria*.²⁰ In this case the Bulgarian government decided to put learners with mental disabilities in a different setting instead of mainstreaming them in ordinary schools. The Court found this unacceptable.

Although 'full inclusion' is the ideal, its implementation can be extremely challenging. In this respect, ensuring the readiness of non-teaching staff and teachers, and the availability of appropriate materials and tools for all learners in the classroom is a complex mission.²¹ In addition, as correctly argued by Boston-Kemple, the challenge of full inclusion is aggravated by the teaching method which may entail having two teachers working simultaneously in the same classroom as this can be very disruptive for some learners, and even for one of the teachers or both.²² In other words, in some circumstances, including learners with disabilities in mainstream schools could be counterproductive. Sharing this view, Ngwena and Pretorius write:²³

Learning and other support for learners who are disabled may militate against teaching learners under the same roof. At the end of the day, substantive equality demands a recognition of, and responsiveness to, difference rather than mechanical standardisation. The particular needs and circumstances of the individual learner rather than integrated learning, per se, should remain the primary focus.

Mindful of the dangers of 'full inclusion', to their credit the drafters of White Paper 6 also cater for the inclusion of learners with disabilities in special schools where their specific and unique needs can be fully catered for.

19 Kamga (n 6) 38.

20 *Mental Disability Advocacy Centre v Bulgaria* Complaint 41/2007, decision rendered on 3 June 2008.

21 EM Dalton et al 'The implementation of inclusive education in South Africa: Reflections arising from a workshop for teachers and therapists to introduce Universal Design for Learning' (2012) 1 *African Journal of Disability* 33; Kamga (n 6) 38.

22 TE Boston-Kemple 'A conceptual analysis of key concepts in inclusive education' PhD thesis, University of Iowa, 2012 29-30, <http://ir.uiowa.edu/etd/2828> (accessed 30 September 2020).

23 C Ngwena & L Pretorius 'Substantive equality for disabled learners in state provision of basic education: A commentary on *Western Cape Forum for Intellectual Disability v Government of the Republic of South Africa*' (2012) 28 *South African Journal on Human Rights* 90.

2.2.2 Inclusion in special schools

The drafters of White Paper 6 were aware of the fact that in some cases, it was in the best interests of the child or the learner with a severe disability to be sent to a special school. Kader Asmal, the Minister of Education during the adoption of White Paper 6, underlined the need to strengthen special schools so as to ensure that they are able to accommodate learners with severe disabilities to foster their inclusiveness.²⁴ To ensure that learners with disabilities are given opportunities equal to those of their counterparts without disabilities, in 2005 the government adopted the Screening, Identification, Assessment and Support (SIAS) Strategy to detect which child needs specific assistance and how this could be provided. Ngwena and Pretorius describe the SIAS strategy as ‘a tool for determining the nature and level of support for learners with “special” education needs [and] to determine which learners could be admitted to special schools and which learners could not’.²⁵ The government’s commitment was further highlighted when in 2007 the National Department of Education published guidelines to transform all special schools into fully-functional special school resource centres where learners with disabilities receive an education similar to that of all other learners in indifferent schools.²⁶

While at first glance the use of the special school seems discriminatory, its objective is to ensure that no child is left behind as it helps to cater for learners with severe disabilities. In the Irish case of *O’Donoghue v The Minister for Health*²⁷ the Irish High Court recognised the sanctity of inclusion in mainstream education but also noted that special schools in some cases could be the solution for effective inclusion. The Court held:²⁸

In the case of the child who is deaf, dumb, blind, or otherwise physically or mentally handicapped, a completely different programme of education has to be adopted and a completely different rate of progress has to be taken for granted, than would be regarded as appropriate for a child suffering from no such handicap.

This position was also supported by the Canadian Supreme Court in *Eaton v Brant Country Board of Education*.²⁹ The Court held that

24 Department of Education ‘Education White Paper 6: Special needs education building an inclusive education and training system’ Statement by the Minister of Education, Kader Asmal (2001) 3.

25 Ngwena & Pretorius (n 23) 88.

26 Kamga (n 6) 18.

27 *O’Donoghue v The Minister for Health; The Minister for Education, Ireland and the Attorney-General* [1993] IEHC2; [1996] 2 IR 20 (27 May 1993).

28 *O’Donoghue* (n 27) para 25.

29 *Eaton v Brant Country Board of Education* [1997] 1 SCR 241.

sending a child with multiple disabilities, including cerebral palsy, an inability to communicate through speech, sign language or other alternative communication methods, visual and mobility impairment, to a special school was in the best interests of the child. In these circumstances, special schools become a means to advance the right to equality of learners in these settings. Therefore, a blanket ban cannot be placed on special schools because in some cases, a failure to use these schools amounts to keeping learners with special needs away from schools or qualifying them as 'uneducable'.

However, special schools should never be dumping grounds where learners with special needs are abandoned in settings with no adequate infrastructure to foster meaningful learning. These schools should not become a pretext for governments to avoid taking responsibility to include learners with disabilities in full service schools. They should not be used to enhance the exclusion and invisibility of learners with disabilities. This was the position of the American case of *Daniel RR v State Board of Education*.³⁰ In this case the Court was very prescriptive in setting conditions under which a learner with disabilities should be accommodated in a special school. For this to happen, the government has to answer the following questions:³¹

- (1) Can education in the regular classroom, with the use of supplementary aids and services, be achieved satisfactorily for a particular student?
 - (a) Has the school taken sufficient steps to accommodate the student in the regular classroom with the use of supplementary aids and services and modifications?
 - (b) Will the student receive educational benefit from the regular education?
 - (c) What will be the effect of the student's presence in the regular education classroom on the education of the other students?
- (2) If the student is to be removed from a regular education classroom and placed in a more restrictive setting, has the student been mainstreamed to the maximum extent appropriate?

These questions unambiguously clarify the state's obligation as far as the use of special schools is concerned. Put differently, sending a child to a special needs school entails attempting everything possible to reasonably accommodate him or her in the mainstream school in the first place. Only after failing to successfully educate the learners

30 *RR v State Board of Education & Others* 874 F 2d 1036; 53 Ed Law Rep 824 (5th Cir 1989).

31 *RR* (n 30) 1048-1049. For more elaboration on this case, see Kamga (n 6) 44.

in mainstream schools can the special school become an option as last resort.³²

In the South African context, it could be argued that the government has taken precautions at least normatively. To this end, White Paper 6 requires that 'full-service schools' or 'mainstream schools' receive learners with several needs inside a school district, where measures will be taken to consider specific needs in providing services to learners.³³ To summarise, its commitment to transform South African education into an inclusive one with a strong emphasis on inclusion in 'full-service' schools, White Paper 6 declares its vision to³⁴ (i) transforming all aspects of the education system; (ii) developing an integrated system of education; (iii) infusing 'special needs and support services' throughout the system; (iv) pursuing the holistic development of centres of learning to ensure a barrier-free physical environment and a supportive and inclusive psycho-social learning environment, developing a flexible curriculum to ensure access to all learners; (v) promoting the rights and responsibilities of parents, educators and learners; (vi) providing effective development programmes for educators, support personnel, and other relevant human resources; (vii) fostering holistic and integrated support provision through intersectoral collaboration.

However, as will be demonstrated later, in practice very little has been done. Normatively, the government has committed to ensuring that inclusive education takes place in mainstream schools and in special schools when necessary. Theoretically, the government has adopted 'a reconciliatory approach between inclusion in mainstream schools and the use of special schools'³⁵ to ensure that no child is left behind as far as education is concerned.

3 Exclusion of learners with disabilities from schools in time of COVID-19

This part of the article will be divided into two sections, both seeking to show the extent to which learners with disabilities were excluded from schools during COVID-19. It demonstrates that disabled learners have been excluded, on the one hand, from mainstream schools and, on the other, also from special schools.

32 *Oberti v Board of Education* 995 F 2d 1204 (3rd Cir 1).

33 White Paper 6 (n 12) 8.

34 White Paper (n 12) 6.

35 Kamga (n 6) 35.

3.1 Exclusion of learners with disabilities from mainstream schools

Under CRPD, state parties are obliged to ensure that ‘persons with disabilities are not excluded from *the general education system on the basis of disability*, and that children with disabilities are not excluded from *free and compulsory primary education*, or from secondary education, on the basis of disability’.³⁶ In other words, learners with disabilities should be included in mainstream schools and for this to happen, reasonable accommodation measures should be provided,³⁷ whereby these learners are given all necessary support in the general education so as to ensure their successful education.³⁸

Reasonable accommodation is at the centre of inclusion. It is defined as

necessary and appropriate modification and adjustments not imposing a disproportionate or undue burden, where needed in a particular case, to ensure to persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms.³⁹

Put differently, the adoption of reasonable accommodation measures entails adopting reasonable adjustment measures to ensure the inclusion of learners with disabilities in mainstream schools. In these circumstances, to be reasonable, the measures should not cause undue or disproportionate burdens or hardship or unjustified costs.

In South Africa, apart from White Paper 6 which sustains the inclusion of learners with disabilities in inclusive setting, such support is reiterated by the White Paper on Disability Rights⁴⁰ which also relies on reasonable accommodation to protect the dignity of persons with disabilities. In this respect, in addressing barriers to foster access, participation and inclusion for persons with disabilities, among others, the White Paper’s strategy highlights the need to focus on reasonable accommodation measures,⁴¹ which comprise adjustment to ensure the accessibility of the physical environment; to information and communication; to accommodate explicit sensory requirements such as those relating to light, noise and spatial stimuli; and foster independence and mobility of persons with disabilities.

36 Art 24(2)(a) CRPD (my emphasis).

37 Art 24(2)(c) CRPD.

38 Art 24(2)(d) CRPD.

39 Art 2 CRPD.

40 White Paper on the Rights of Persons with Disabilities adopted on 9 December 2015, *Government Gazette* 39792 of 9 March 2016.

41 White Paper (n 40) para 6.1.1.6.

Having assessed what should be done to ensure the inclusion of learners with disabilities, it is necessary to examine the extent to which measures taken by South Africa foster the inclusion of learners with disabilities in general education during COVID-19. To ensure that the right to education is not interrupted, the government undertook numerous initiatives, including the provision of online resources for parents, caregivers and learners to support learning at home. These initiatives also entail the delivery of study material for all grades, on multimedia with assessments, audio lessons, video tutorials, interactive workbooks, lockdown digital school, Vodacom e-school and reading material. They also cover COVID-19 guides in various languages, with numerous links to e-education resources, school curricula and broadcast support programmes on television and radio as well as numerous tips for parents.⁴² One of the landmark programmes was the Basic Education and SABC Coronavirus television and radio curriculum support programmes for learners. In the same vein, and to its credit, the Free Stem Lockdown Digital School had developed into community television to reach more learners.⁴³

At first glance, the government should be commended for its initiative to foster education during the time of COVID-19. However, learners with disabilities are forgotten for the following reasons: First, most initiatives rely primarily on computers, tablets and online learning portals, virtual lessons and radio or television lessons that are not often accessible to learners with disabilities.⁴⁴ Linked to this is the fact that virtual lessons are associated with access to the internet which is not cheap and, therefore, not available to learners with disabilities, generally associated with extreme poverty.⁴⁵ Although the government subsidised access to the internet through deals with network providers, internet and broadband penetration remain a challenge especially in rural areas where a low rate of media access is also a constraint to inclusive education.

Second, another challenge faced by learners with disabilities is the fact that most gadgets such as tablets, computers, mobile phones

42 Department of Basic Education 'Online resources for parents, caregivers and learners to support learning at home', <https://www.education.gov.za/> (accessed 30 September 2020).

43 For more on this initiative, see <https://www.gov.za/Coronavirus/education> & DBE website www.education.gov.za.

44 C McClain-Nhlapo 'An inclusive response to COVID-19: Education for children with disabilities' 11 May 2020, <https://www.globalpartnership.org/blog/inclusive-response-covid-19-education-children-disabilities> (accessed 15 June 2020).

45 M Pinilla-Roncancio 'Disability and poverty: Two related conditions. A review of the literature' (2015) 63 *Revista de la Facultad de Medicina* 113; M Palmer 'Disability and poverty: A conceptual review' (2011) 21 *Journal of Disabilities Policy Studies* 210.

and online portals used to provide education are not equipped with the essential and compulsory 'accessibility features to make them usable for children with disabilities. And, even when the tools are made with the accessibility features, they require technology that is not readily available to many learners [with disabilities]'.⁴⁶ These challenges are also real when lessons are provided through television or radio that is not equipped with accessibility features. Explaining these challenges with regard to access to education through a virtual environment for learners with hearing impairments, for example, McClain-Nhlapo writes:⁴⁷

They might not be able to hear what the lecturer is saying (audio is distorted through technology). Other challenges include absence of closed captions or subtitles, not being able to quickly check with a peer what was said, and not having manual or electronic notes immediately available to them.

Put differently, shifting teaching and learning online without providing reasonable accommodation for learners with disabilities constitutes discrimination against these learners. The reasonable accommodation of these learners would include subsidies, or the provision of computers equipped with accessibility features, subsidised access to the internet for these learners, and ensuring that all lessons on television have sign language interpreters. In doing so, all learners would thus be provided with the necessary and appropriate technology devices.

While it could be argued that the state does not have the available resources, this argument cannot hold water because basic education, which is at the centre of this article, needs to be realised immediately and is compulsory. In fact, it is disquieting to note that learners with disabilities often are at the receiving end of the justification for exclusion of a lack of resources. That is to say that if indeed there are no resources, every other learner should experience the challenge faced by the state in discharging its obligation and not only learners with disabilities. Therefore, a failure to provide reasonable accommodation for learners with disabilities amounts to declaring them 'uneducable' during the time of COVID-19. This is a violation of their right to equality provided for in section 10 of the South African Constitution as well as in the Promotion of Equality and

⁴⁶ McClain-Nhlapo (n 44).

⁴⁷ As above. Also see D Bell 'How to help students with a hearing impairment as courses move online' *The Conversation* 2 April 2020, <https://theconversation.com/how-to-help-students-with-a-hearing-impairment-as-courses-move-online-134582> (accessed 20 June 2020).

Prevention of Unfair Discrimination Act,⁴⁸ which compels all persons and entities to reasonably accommodate persons with disabilities.

In *Harksen v Lane*⁴⁹ the Constitutional Court pronounced itself on the test for unfair discrimination in stating that three questions are crucial, namely, whether the law, policy or practice on which the differentiation between people or groups of people such as the differentiation in the circular is rational and legitimate; whether the differentiation is unfair discrimination; and in the case of the differentiation being unfair discrimination, whether it can be justified under section 36 of the Constitution. The second question underlines the need to protect the human dignity of all. To this end, the Court explores the impact of the discrimination on the complainant and the social group(s) to which he or she belongs. In this exercise the following factors are significant: (a) the position of the plaintiff in society and the extent to which he or she belongs to a group that has been the victim of disadvantage or exclusion in the past; (b) the type of provision or power and the objective it seeks to achieve, including considering whether the provision or power is intended to achieve a worthy and important social goal; and (c) the extent to which the provision or power had affected the rights or interests of the plaintiff and whether it has encroached upon the fundamental human dignity of the plaintiff in a comparably severe manner.⁵⁰

During COVID-19 the provision of education through digital and media schooling led to unfair discrimination against learners with disabilities who are in a fragile position; belong to a group that is generally the victim of exclusion and disadvantage; and the provision of a regulatory framework and practice of digital schooling had affected their rights or interests and violated their fundamental human dignity by depriving them of the right to education.

The violation of the right to education of learners with disabilities during the pandemic is caused by the lack of political will to foster their education. This is demonstrated by *Centre for Child Law v Minister of Basic Education*.⁵¹ On 8 April 2020 the Centre for Child

48 Act 4 of 2000.

49 *Harksen v Lane NO & Others* 1998 (1) SA 300 (CC) para 53.

50 *Harksen v Lane* (n 49) paras 51-53; for further analysis of this case, see SD Kamga 'The protection of the right to employment of persons with disabilities in Africa: Lessons from Zimbabwe' (2017) 1 *Zimbabwe Rule of Law Journal* 93; C Ngwena 'Western Cape Forum for Intellectual Disability v Government of the Republic of South Africa: A case study of contradictions in inclusive education' (2013) 1 *African Disability Rights Yearbook* 139; R Kruger 'Equality and unfair discrimination: Refining the *Harksen* test' (2011) 128 *South African Law Journal* 479.

51 *Centre for Child Law v Minister of Basic Education*, High Court of Pretoria, Case 3123/2020.

Law engaged the DBE and the DBE's inclusive education directorate to find out what had been done to ensure the readiness of schools to welcome learners with disabilities and for the support and services available for parents or caregivers of these pupils during lockdown.⁵² Several follow-up letters were sent to these departments, but to no avail, until 5 May 2020 where the Directorate presented an inappropriate and vague document with no specifics on what had been done to ensure the readiness of schools to welcome pupils and schools and support them while at home.⁵³ As will be demonstrated later, it needed a court order to force the DBE to adopt measures for education that are inclusive of all learners with disabilities.

3.2 Exclusion of learners with disabilities from special schools

According to Khumalo and Hodgson, 'special schools are primary and high schools that are equipped to deliver a specialised education programme to learners requiring access to highly intensive educational support'.⁵⁴ These learners with specific disabilities are placed in special schools with expertise in the accommodation of their particular disability.⁵⁵ The normative commitment of White Paper 6 to ensure the inclusion of learners with severe disabilities is not questionable. To ensure that none of these learners is left behind, the Department of Education adopted Guidelines to Ensure Quality Education and Support in Special Schools and Special School Resource Centres in 2007 and 2014. These Guidelines address issues related to the admission of learners, the curriculum, personnel quality and utilisation, infrastructure, accommodation, transport, resources and facility supports, to list but a few. Ultimately, the quality of support at school, assistive devices and attention, are key to the success of learners with special needs.

Moving from physical to virtual education during COVID-19 deprived learners with special needs of the most needed support that is crucial to their learning success. In this respect, it is assumed that inexperienced parents in special needs education are at the centre of their children's education in terms of supervising their learning, creating a school environment at home and also teaching substantial content.⁵⁶ This is an impossible mission for many parents who simply

52 *Centre for Child Law* (n 51) paras 46, 47, 48 & 49.

53 *Centre for Child Law* (n 51) paras 52, 52.1, 52.2 & 52.3.

54 S Khumalo & T Hodgson 'The right to basic education for children with disabilities: Section 27's action from national research and litigation strategies to international advocacy' (2016) *Basic Education Rights Handbook* 110.

55 As above.

56 J McKenzie et al 'The education of children with disabilities risks falling by the wayside during the pandemic' 27 May 2020, <https://www.dailymaverick.co.za/>

do not have the required expertise to be a teacher to their children with special needs, who could end up being left behind. A concerned parent explains this challenge as follows:⁵⁷

We [parents] both work from home anyway, but he's usually at school. It's difficult to work with a child who needs constant attention. He's not coping very well. His frustration levels are increasing, lack of outings and being indoors is not good. Not being at school, being out of routine, not being stimulated, all these things are adding to his frustration, which increases his levels of aggression, anxiety and of late, depression (he has been crying far more).

This challenge also underscores that some learners with special needs may need extra attention including personal assistants, a variety of therapies and/or emotional support and to be kept on the school nutrition programme to be able to sustain their studies. This support is no longer provided with the shifting of education to online and media.⁵⁸

The exclusion of learners with disabilities is further compounded by the fact that most study materials are locked away at school and inaccessible from home. In some cases, when teachers manage to send materials to parents, the latter often do not have the required skills to use these and to support their children efficiently. Nonetheless, there are some positive stories where learners with special needs were successfully accommodated. On a brighter note, Mckenzie *et al* illustrate the success story with the following example:⁵⁹

In Cape Town, the High Spirits Skills Training Centre for the Intellectually Challenged prepared activity packs which were distributed through the food parcel distribution network. These included the paper, activity pages, colouring-in pages and other play materials. Instructions were shared in hardcopy with the activity pack, and also via the school's WhatsApp group. They are currently developing video tutorials on the organisation's Facebook page.

While this is encouraging, it unfortunately is the exception because many learners in numerous other schools are forgotten and considered 'uneducable' during COVID-19. They are left behind, because study materials are not sufficient to cater for their education which can 'range from learning difficulties to emotional, behavioural

article/2020-05-27-the-education-of-children-with-disabilities-risks-falling-by-the-wayside-during-the-pandemic/ (accessed 28 June 2020).

57 As above.

58 McClain-Nhlapo (n 44).

59 As above.

or physical challenges affecting a child's ability to learn or socialise as well as specialised education programmes'.⁶⁰

Apart from the very problematic absence of study materials, special programmes and qualified teachers at home, assistive devices such as Perkins Braille or video technology for communicating remotely in sign language often are not available at home. In addition, even if these device supporting systems were to be delivered to families, not only are they not affordable, but they are not always user-friendly for parents who may be unfamiliar with them and consequently unable to assist their children.⁶¹ In the same vein, the home environment is not equipped with stimulating tools related to sights, sounds and notion embedded in the education of learners with sensory, physical and intellectual disability disabilities.⁶²

From the foregoing, it could thus be argued that the rights of learners with special needs education have been violated during COVID-19. Learners with disabilities were unfairly discriminated against because they belong to a well-known disadvantaged group. In addition, the government's initiative for continuing education during lockdown did not consider the plight of learners with special needs, and this amounts to the violation of their dignity. Clarifying unfair discrimination and the violation of human dignity, the Court held in *Hugo*:⁶³

The prohibition on unfair discrimination in the interim Constitution seeks not only to avoid discrimination against people who are members of disadvantaged groups. It seeks more than that. At the heart of the prohibition of unfair discrimination lies recognition that the purpose of our new constitutional and democratic order is the establishment of a society in which all human beings will be accorded equal dignity and respect regardless of their membership of particular groups. The achievement of such a society in the context of our deeply inegalitarian past will not be easy, but that that is the goal of the Constitution should not be forgotten or overlooked.

In other words, the government should have been proactive in ensuring that all learners with disabilities, including those with special needs education, were catered for as far as schooling was concerned. In fact, these learners should have been given precedence in light

60 A Pedro, B Mthimunye & E Bust 'How lockdown could affect children with special needs' *The Conversation* 12 May 2020, <https://theconversation.com/how-lockdown-could-affect-south-africas-children-with-special-needs-137127> (accessed 20 June 2020).

61 McKenzie et al (n 56).

62 As above.

63 *President of the Republic of South Africa & Another v Hugo* 1997 (4) SA 1 (CC); 1997 (6) BCLR 708 (CC).

of the *Grootboom* Court's prescription which requests that priority should be given to the most vulnerable.⁶⁴ The failure to do so leads to the claim that, by moving to virtual education, 'the government is leaving most children with disabilities behind, with no education at all'.⁶⁵ This argument will hold water because no reasonable accommodation measures were adopted during the pandemic to ensure that these learners also accessed education. Although they remain formally equal to other learners as prescribed by section 29 of the Constitution, nothing was done to protect their substantial equality with their counterparts without disabilities. This could have been done by specific measures to ensure the continuity of education of learners with disabilities. Marumoagae writes:⁶⁶

Equality for persons with disabilities cannot stop with injunctions to refrain from invidious discrimination, but there must be a *practical acknowledgment* that persons with disabilities are not fully catered for by existing societal structures and that they have a right to participate fully in society.

Practical acknowledgment may can be interpreted to mean taking concrete action to foster the right to education of learners with disabilities. From this perspective, unfair discrimination will occur if the state fails to 'take positive steps to make sure that disadvantaged groups benefit equally from services offered to the general public'.⁶⁷ In the Canadian case of *Eldridge v British Columbia*⁶⁸ the Court stated that the prohibition of discrimination against persons with disabilities (under the Canadian Charter of Fundamental Rights) is not only a negative right but also a positive right that obliges the state to take positive actions to ensure that persons with disabilities enjoy equal rights with all other members of society.⁶⁹

In sum, it could be argued that COVID-19 exposes a significant degree of discrimination against persons with disabilities. It exposes the exclusion and systemic marginalisation of learners with disabilities who have remained invisible for years. The next part focuses on lessons for the future.

64 *Government of the Republic of South Africa v Grootboom* 2000 (11) BCLR 1169 (CC); 2001 (1) SA 46 (CC).

65 R Beere, S Khumalo & T Hodgson 'Lend children with disabilities a hand' *Mail & Guardian* 15 March 2018, <https://mg.co.za/article/2018-03-15-00-lend-children-with-disabilities-a-hand/> (accessed 21 June 2020).

66 MC Marumoagae 'Disability discrimination and the right of disabled persons to access the labour market' (2012) 15 *Potchefstroom Electronic Law Journal* 347 (my emphasis); S Day & G Brodsky 'The duty to accommodate: Who will benefit?' (1996) 75 *Canadian Bar Review* 433.

67 *Eldridge v British Columbia (Attorney-General)* [1997] 3 SCR 624 para 79.

68 As above.

69 *Eldridge* (n 67) para 79.

4 Lessons for the future: Addressing systemic deficits in South Africa's 'inclusive' education system

The COVID-9 pandemic has revealed the systemic marginalisation of learners with disabilities by the South African education system which excludes approximately 600 000 of these learners from schools.⁷⁰ To remedy the situation and in preparation for future pandemics, it is imperative to foster the implementation of inclusive education. This entails providing appropriate and reasonable accommodation commensurate with learners' needs in mainstream schools, and providing more well-resourced special schools.

4.1 Providing reasonable accommodation for the inclusion of learners with disabilities

Providing reasonable accommodation commensurate with learners' needs in mainstream schools entails multiple actions. First, it is imperative to collect disaggregated data by disabilities. This will enable the government to know the number of learners with disabilities, their gender and the types of disabilities. In a similar vein, it is important to know who is included in mainstream schools, or special care centres. Having this data is necessary to enable the government to plan its inclusive education actions and to be able to monitor and evaluate progress. This exercise would prepare the ground for an appropriate response in times of pandemics when it is important to know the numbers and areas of additional interventions to avoid leaving any learner behind. A failure to map out disability trends in schools during non-pandemic contexts will hinder the ability of the government to include learners with disabilities in the education system during times of crisis. Sharing this view, Singal writes that '[g]athering disaggregated data is essential for human rights from the perspective of meeting the obligations of non-discrimination and equality. Thus, the right to be counted is an essential aspect of fulfilling the goals of an inclusive society.'⁷¹

70 'Advocacy group heads to court as 600 000 disabled school kids forced to stay at home' 26 September 2019, <https://www.iol.co.za/news/advocacy-group-heads-to-court-as-600-000-disabled-school-kids-forced-to-stay-at-home-33570968> (accessed 23 June 2020).

71 N Singal 'Disability and data: Need for numbers and narratives' 1 August 2018, <http://www.washingtongroup-disability.com/disability-data-need-numbers-narratives/> (accessed 25 July 2020). For more on the need to collect data on disability to advance the inclusion of persons with disabilities, see O Abualghaib et al 'Making visible the invisible: Why disability-disaggregated data is vital to "leave no-one behind"' (2019) *Sustainability* 1.

Second, the curriculum should be designed to meet the needs of all learners in the classroom. In this respect, the universal learning design (ULD) principles should be implemented to ensure that no learner is left behind. According to Eagleton,⁷²

[t]hese principles guide educators in finding innovative ways to make curriculum accessible and appropriate for individuals with different backgrounds, learning styles, abilities, and disabilities in various learning situations and contexts. This paradigm for teaching, learning, assessment, and curriculum development focuses on adapting the curriculum to suit the learner rather than the other way around. ULD guides teachers and curriculum developers toward creating flexible materials and methods before they are put in students' hands, rather than waiting until students arrive and trying to retrofit inflexible materials to each learner. In considering [ULD] as a new paradigm for addressing the instructional needs of students with disabilities and those at risk for learning challenges, 'disability' is viewed as a normal phenomenon of human diversity rather than as an aberration.

While the ULD principles are instrumental to securing the inclusion of learners with disabilities, the resultant curriculum should be in all accessible formats. Related workbooks and textbooks and other materials should be accessible in all formats. They should be put online with reading tools, and be popularised through radio and television and other portals at all times. This will help prepare the ground for the automatic inclusion of learners with disabilities in case of pandemics without any need to adopt *ad hoc* measures.

The effectiveness of this approach requires reallocating and targeting resources to provide internet, radio and television access to households with learners with disabilities. Not only will this assist the learners who cannot physically attend school, but it will also empower the family and caregivers in attending to the education of these learners regularly and, importantly, in times of pandemics. This leads to the third point, namely, the preparedness of parents and caregivers of learners with disabilities which is instrumental at all times. Their 'emotional resilience'⁷³ needs to be regularly fostered and their training upgraded to assist their children with disabilities at all times and in times of pandemics. Sharing this view, Buchanan calls on the government to enable or support parents or caregivers by equipping them with the necessary skills to assist with the education of their children away from schools.⁷⁴ In this endeavour, teachers

72 M Eagleton 'Universal design for learning' (2008) 1-2, <https://www.ebscohost.com/uploads/imported/thisTopic-dbTopic-1073.pdf> (accessed 27 July 2020).

73 J Buchanan 'Protect the rights of people with disabilities during COVID-19' 25 March 2020, <https://www.hrw.org/news/2020/03/26/protect-rights-people-disabilities-during-covid-19#> (accessed 20 June 2020).

74 As above.

should be encouraged through various incentives to be permanently in contact with parents and caregivers of learners with disabilities, to guide and assist them with the provision of home support to the learners.⁷⁵ Needless to say, teachers should be properly trained, skilled and equipped to become the learners' and parents' trainers. These measures should be integrated in education permanently to advance inclusive education that will not be interrupted during future pandemics.

4.2 Providing more special schools for the inclusion of learners with disabilities

While normatively the country commits to provide special needs learners with special schools, on the ground these schools are insufficient as thousands of learners with severe disabilities are left at home.⁷⁶ This amounts to the violation of their rights to education. This was the position of the Court in *Western Cape Forum for Intellectual Disability v Government of the Republic of South Africa*.⁷⁷ In this case the Court was unequivocal in holding that the education of learners with severe intellectual disabilities away from school but in private settings such as non-governmental organisations (NGOs) was a violation of the right to education of these learners and urged the government to remedy the situation. Yet, there are reports that approximately 11 000 school children with severe to profound intellectual disabilities who were refused admission at public schools are still accommodated in these special care centres under NGOs' roofs, in private homes, RDP houses and shacks.⁷⁸ The lack of funding and adequate support from the government at various levels hinders the effective inclusion of learners with disabilities in schools. This is disquieting, especially at the primary or basic education level where the enjoyment of the right is not subject to progressive realisation, but should be enjoyed immediately.

However, to its credit, the government through the Department of Social Development and the Department of Health undertook the expansion of special care centres with increased funding from

75 M Brodie et al 'Learning in the time of COVID-19: Equitable support during school closures desperately needed' *Coronavirus OP-ED* 21 April 2020, <https://www.dailymaverick.co.za/article/2020-04-21-learning-in-the-time-of-covid-19-equitable-support-during-school-closures-desperately-needed/#gsc.tab=0> (accessed 20 June 2020).

76 V Japtha 'We fail children living with disabilities' 6 March 2020, <https://mg.co.za/article/2020-03-06-we-fail-children-living-with-disabilities/> (accessed 20 June 2020).

77 *Western Cape Forum for Intellectual Disability v Government of the Republic of South Africa* 2011 (5) SA 87 (WCC).

78 Japtha (n 76).

R34 million in 2011 to R80 million in 2017, including R11 million from the Western Cape Education Department, to fund outreach teams to special care centres.⁷⁹ This is a positive development which is in line with the remedies prescribed by the *Western Cape Forum* case. While this is a positive development, many other learners with disabilities remain on the margins of schools. Angie Motshekga, Minister of Basic Education, recognises this problem. She states that learners with severe to profound disabilities are 'at risk of compound marginalisation' and 'in every settlement in South Africa, rural, peri-urban and urban, there are children with disabilities who remain excluded from education'.⁸⁰ This acknowledgment by the Minister of Basic Education reinforces the call to build more special schools if inclusive education is to become a reality in ordinary times and also during pandemics.

Building these schools and ensuring the training of staff and harmonising their capacity with those of the parents and caregivers of learners with disabilities, as discussed earlier, will enhance the prospect of an effective and inclusive education generally and specifically in times of pandemics. In these schools, all necessary measures should be taken to ensure that materials, including textbooks, workbooks and others, are available in various accessible formats and made available at all times. The transformation of the education sector into an inclusive one should be systemic, thereby enabling the inclusion of learners with disabilities in the education system in times of pandemics.

Centre for Child Law v Minister for Basic Education,⁸¹ in which the Equal Education Law Centre represented the Centre for Child Law, clearly illustrates the lack of government commitment to secure the right to inclusive education of pupils with disabilities. The Centre for Child Law engaged the DBE several times (over a period of three months) for the inclusion of learners with disabilities in the measures or directives adopted to return to school during COVID 19. The DBE demonstrated a strong resistance to adopt specific measures for the accommodation of these learners who had to return to school as well as those who had to remain at home. All its directives and amendments were unsatisfactory.⁸² Consequently, the Centre for Child Law approached the Court with an urgent application to declare invalid a number of the latest directives published on 23 June 2020. These directives covered only the needs of learners with autism

79 As above.

80 As above.

81 *Centre for Child Law* (n 51).

82 *Centre for Child Law* (n 51) paras 51, 57, 58, 62 & 69.

and deaf, hard of hearing, blind and partially-sighted learners, and disregarded those of learners with physical disabilities, intellectual disabilities, epilepsy and severe to profound intellectual disabilities as well as those that will have to remain at home. By agreement between the parties, the court order gave the respondent three weeks to amend its directives to include learners with physical and intellectual disabilities, epilepsy and severe to profound intellectual disabilities and to address the readiness of special school hostels, among other measures.⁸³ The draft amended directive and the DBE guidelines prepared to this effect should be made public for comments for ten days before issuing the final document after the consideration of public comments.

While this decision is hailed as a victory for learners with disabilities, the state should avoid going to that length to implement the right to inclusive education. It should rather work proactively and bear in mind that learners with disabilities are part of human diversity and should always foster their inclusion in the education. To this end, it is imperative to develop guidelines to address the plight of all learners with disabilities in normal times and during pandemics and avoid the 'one-size-fits-all approach' in the process. Failure to do so will not include learners with disabilities in the education system and fail to advance the transformation of South African society into an equalitarian one.

5 Conclusion

The aim of the article was to interrogate the extent to which basic education was inclusive of learners with disabilities during the COVID-19 pandemic which was characterised by online and media education. The article started with a recognition that South Africa is party to all international and regional instruments that provide for an inclusive free and compulsory primary education to be realised immediately. It also acknowledged that South Africa has adopted legal and policy as well as theoretical frameworks to ensure that no child is left behind as far as inclusive education is concerned.

Notwithstanding this normative compliance, the article found that during COVID-19 learners with disabilities in mainstream schools did not enjoy reasonable accommodation that would have been vital for their inclusion in the education system. Materials such as workbooks and exercise books were not in accessible formats for these learners;

83 *Centre for Child Law* (n 51) paras 1.2-1.4.

numerous online platforms used were not accessible to them; and radio and television through which education was provided were not always accessible to these learners. In addition, the parents were not trained and skilled to facilitate the education of their children from home.

The article also found that learners with disabilities also were not included in special needs schools. The latter are insufficient to accommodate all learners who require these schools. Moreover, as in the case of mainstream schools, materials and resources are not in accessible formats to learners with severe disabilities. Even though there were positive developments with a budget increase to the benefit of these schools, much more needs to be done to ensure that many more needy students accessed these institutions. In sum, during the COVID-19 pandemic learners with disabilities were considered 'uneducable' as no specific measures were taken to ensure their right to equality though various platforms with their non-disabled counterparts who attended schools. It was also found that learners with disabilities were not included in the ministerial directives on returning to school during the pandemic. However, when forced to do so, the DBE included only the needs of learners with autism and deaf, hard of hearing, blind and partially-sighted learners in its amended directives and disregarded other types of disability.

Based on these findings, the article draws lessons for the future. To this end, it emphasises the need to address systemic deficits in South Africa's 'inclusive' education system. This will entail a total transformation of the system to ensure its inclusiveness in ordinary times and not just in times of crisis. For this to happen, it is vital to collect disaggregated data by disabilities. This will enable the government to know the number of learners with disabilities, the gender and the type of disabilities. Having this data will be instrumental for disability programming in the education sector. This will help with a roadmap to advance inclusive education in mainstream schools as well as special needs schools and foster the monitoring and evaluation of inclusion initiatives.

Furthermore, it is imperative to ensure that prior to any pandemic, reasonable accommodation measures are taken in mainstream schools to foster the inclusion of learners with disabilities. This should include ensuring the availability of all study materials in accessible formats, and advancing online education at all times so as to assist learners with disabilities and their parents to be able to work from home. Additionally, through affirmative action measures, households with learners with disabilities should have their internet or data and

radio subsidised by the government so as to include these learners in the education system, especially at the basic or primary level where the enjoyment of the right should be immediate and free of charge. Furthermore, it is imperative to build more special needs schools, equip them adequately and ensure that they welcome all the needy learners without exception. These measures should be taken and implemented prior to pandemics so as to ensure their operationalisation without loopholes should any crisis or pandemic occur. While the discussion focuses on South Africa, lessons learned from the pandemic apply across Africa where persons with disabilities are generally marginalised.