

CHAPTER 6

RESERVATION ON THE CRPD FROM A MAURITIAN PERSPECTIVE

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Summary

The Convention on the Rights of Persons with Disabilities (CRPD) was the first legally binding document to address disability from a human-rights perspective. The Republic of Mauritius ratified the CRPD in 2010, with reservations on three provisions namely on the state parties' duty to take appropriate measures to provide signage in Braille and in easy-to-read forms in buildings and other facilities open to the public; situations of risk and humanitarian emergencies; and on the right of persons with disabilities to access an inclusive, quality and free education, on an equal basis with others, in the communities in which they live. This paper will show how the reserved provisions, from a Mauritian perspective, are not in line with the object and purpose of the Convention, and why they should not prevail, especially in light of the fact that persons with disabilities in the country already face numerous prejudices and stigmas. Maintaining reservations on these three critical provisions represent additional obstacles to an already challenging situation, as Mauritian laws are not sufficient in themselves to afford the protection envisaged by the CRPD to persons with disabilities inasmuch as they fail to adequately consider the paradigm shift and have not been drafted to accommodate the diversity of persons with disabilities in the country. This paper contends that a whole decade has passed since the ratification of the CRPD in Mauritius and that, with new developments and legislation in place, the country should move to remove such reservations for all the reasons set out hereunder.

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1 Introduction

The Republic of Mauritius¹ ratified the United Nations Convention on the Rights of Persons with Disabilities (CRPD) in 2010. Reservations were placed on three provisions when doing so, namely those relating to accessibility,² situations of risk and humanitarian emergencies,³ and education.⁴ According to the state party's report submitted under article 35 of the CRPD in 2014, the reservations would be removed once appropriate measures were taken in view of further developments in the three abovementioned fields.⁵

More than a decade later, however, the reservations remain in place, despite new legislation, regulations and other measures having been implemented. This paper will discuss the impact that these reservations have on the lives of persons with disabilities in Mauritius, and why they should not be allowed to remain. Firstly, this paper will review the CRPD generally, and its position on reservations. It will then analyse the trends which Mauritius has adopted regarding disability rights, as well as some significant barriers under national laws faced by persons with disabilities in the country. It will then thoroughly discuss the reserved provisions and the need to remove them.

Essentially, this paper contends that the reservations placed on the CRPD are incompatible with its object and purpose. They were imposed at a time which has now progressed to such an extent, that they are today, merely supplementing to the stigma already faced by persons with disabilities in the country. The reservations fail to consider the full circumstances of persons with disabilities in Mauritius, impede on the equal enjoyment of their rights and fundamental freedoms, and allow for the state party not to be bound to take the necessary measures to remove the barriers thereof. They should as such, be removed so as to further the rights of persons with disabilities in the country.

1 The country consists of the main island, Mauritius, and the surrounding islands of Rodrigues, Agalega, and St Brandon.

2 Article 9(2)(d) of the UN General Assembly, Convention on the Rights of Persons with Disabilities: resolution/adopted by the General Assembly, 24 January 2007, A/RES/61/106 (2007) (CRPD).

3 Article 11 of the CRPD.

4 Article 24(2)(b) of the CRPD.

5 CRPD Committee, Consideration of Reports submitted by State Parties under article 35 of the Convention, Initial reports of State parties due in 2010: Mauritius, 11 August 2014, UN Doc CRPD/C/MUS/1 (2014) para 11.

2 The CRPD

2.1 Background

The CRPD represented a ground-breaking advancement in disability rights law: it was the first legally binding international instrument to fully address the position of persons with disabilities from a human rights perspective.⁶ It constituted a modern and powerful paradigm for persons with disabilities who were previously viewed as objects, allowing them to be recognised as full legal subjects and participants of society.⁷

While no provision is made for a fixed definition of the term 'disability', the CRPD suggests that disability generally occurs when persons with impairments interact with barriers prevailing in society, whether these be attitudinal or environmental.⁸ Under the CRPD, persons with disabilities include those persons with physical, mental, intellectual, or sensory impairments, who when into contact with such barriers, are prevented from fully and effectively participating in society.⁹

Since the CRPD does not have regard to the condition of a person when establishing what qualifies as a disability, it is said to have departed from the medical model of disability, preferring a social model.¹⁰ It rejects the archaic stereotype which views disability as a medical condition requiring a cure and represents persons with disabilities as active members of society, who are entitled to enjoy equal human rights and fundamental freedoms.¹¹

The CRPD seeks to provide persons with disabilities with the full and equal enjoyment of their rights and fundamental freedoms and to promote the respect for their inherent dignity.¹² Under article 4, the CRPD sets forth a list of all the obligations which must be upheld and fulfilled by state

6 P Weller 'The Convention on the Rights of Persons with Disabilities and the social model of health: New perspectives' (2011) 21 *Journal of Mental Health Northumbria University* 74 at 75.

7 P Harpur 'Embracing the new disability rights paradigm: The importance of the Convention on the Rights of Persons with Disabilities' (2012) 27 *Disability & Society* 1 at 2; P Bartlett 'Implementing a paradigm shift: Implementing the Convention on the Rights of Persons with Disabilities in the context of mental disability law' in *Torture in healthcare settings: reflections on the Special Rapporteur on Torture's 2013 Thematic Report* (2014) at 169-180.

8 Preamble at para 5 of the CRPD. The Preamble of the CRPD recognises disability as an 'evolving concept, occurring as a result of interaction between persons with impairments and attitudinal and environmental barriers that hinders their full and effective participation in society on an equal basis with others'.

9 Article 1 of the CRPD.

10 K Kazou 'Analyzing the definition of disability in the UNCRPD: Is it really based on a "social model" approach?' (2017) 23 *International Journal of Mental Health and Capacity Law* 25 at 27.

11 Harpur (n 7) 2.

12 As above.

parties to guarantee the full and effective realisation of these rights and freedoms.¹³ Most importantly, the CRPD in article 3 sets out eight general principles:

- (i) the respect of inherent dignity, individual autonomy, and independence of persons with disabilities;¹⁴
- (ii) non-discrimination;¹⁵
- (iii) the full and effective participation and inclusion in society;¹⁶
- (iv) respecting differences and accepting persons with disabilities as part of human diversity and humanity;¹⁷
- (v) equal opportunities;¹⁸
- (vi) accessibility;¹⁹
- (viii) equality;²⁰ and
- (ix) the respect for children with disabilities.²¹

The CRPD further refers to the concept of ‘reasonable accommodation’, requiring state parties to make any modifications and adjustments which are necessary and appropriate to ensure that persons with disabilities enjoy their human rights and fundamental freedoms, insofar as such steps do not cause any disproportionate or undue burden.²²

These principles, together with the obligations on state parties under the CRPD, form the basis of this paper and will be discussed in greater detail throughout this article.

2.2 Object and purpose of the CRPD

The object and purpose of the CRPD, as provided under article 1 thereof, is to ‘promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities,

13 Article 5 of the CRPD. The list includes adopting legislative and other similar measures to promote the rights of persons with disabilities and to abolish discrimination; to promote and protect the rights of persons with disabilities in all policies and programmes; to stop breaches of the rights of persons with disabilities; to ensure that both the public and private sector respect the rights of persons with disabilities; to undertake research to further the accessibility of persons with disabilities; to provide accessible information on assistive technology to persons with disabilities; to encourage training on the rights of the Convention for persons working with persons with disabilities; and to consult and involve persons with disabilities when developing and implementing legislative and policies concerning them, amongst others.

14 Article 3(1) of the CRPD.

15 Article 3(2) of the CRPD.

16 Article 3(3) of the CRPD.

17 Article 3(4) of the CRPD.

18 Article 3(5) of the CRPD.

19 Article 3(6) of the CRPD.

20 Article 3(7) of the CRPD.

21 Article 3(8) of the CRPD.

22 Article 2 of the CRPD.

and to promote respect for their inherent dignity'.²³ It is apposite to note that the CRPD is the only human rights treaty to cater for its designated purpose under a separate provision and that the formulation of article 1 is thus a unique one under international human rights.²⁴ This is particularly significant in the present context, in light of the fact that reservations under the CRPD can only be placed insofar as such reservations are in line with the object and purpose thereof.²⁵ The reason for including a separate provision in respect of the 'purpose' of the CRPD stems from the fact that persons with disabilities were previously considered as 'invisible' and the purpose provision sought to ensure that they were afforded all human rights and fundamental freedoms on an equal footing with other persons.²⁶

On the one hand, the obligation to 'respect' as set out in article 1 aims to prevent state parties from interfering with the fundamental freedoms of persons with disabilities, either directly or indirectly, whilst on the other hand, the obligation to 'protect' places an obligation on state parties to ensure that third parties do not interfere with the enjoyment of the human rights of persons with disabilities and to adopt all legislative and policy measures necessary thereon.²⁷ In the same vein, the obligation to 'fulfil' has been deemed to include three further obligations, namely to facilitate the rights of persons with disabilities, by taking such measures as may be necessary to assist persons with disabilities in enjoying their rights; to promote their rights by upholding such rights; and to make the rights of persons with disabilities available when they are unable to realise those themselves.²⁸

With regards to the provision of inherent dignity, it is considered as a crucial element in achieving the paradigm shift from a medical approach to a human rights approach.²⁹ This provision purports to ensure that persons with disabilities are guaranteed their 'intrinsic worth' as human beings, and that they are respected and recognised on an equal basis with others.

The overall object and purpose of the CRPD can thus broadly be summarised as the core provisions of the Convention, which seek to formally guarantee that persons with disabilities are afforded all human rights under international human rights law on an equal basis with others at all material times.

23 Article 1 of the CRPD.

24 E Kakoulis & Y Ikehara 'Article 1: Purpose' in I Banketas, MA Stein & D Anastasiou (eds) *The UN Convention on the Rights of Persons with Disabilities: A commentary* (2018) 36.

25 Article 33 of the CRPD.

26 Kakoulis & Ikehara (n 24) 48.

27 Kakoulis & Ikehara (n 24) 49.

28 As above.

29 Kakoulis & Ikehara (n 24) 51.

2.3 Reservations

A reservation is a unilateral statement made by a state at the time of signing, ratifying, accepting, approving, or acceding to a treaty, with the aim of excluding or modifying the legal effect of one or more of a treaty's provisions in their application to that state.³⁰ In effect, it allows a state to ratify a treaty without having to bind itself to provisions it does not wish to. This is commonly the case when for example, a domestic policy conflicts with the provision in question, or if a country is subject to a different system of law at the time of accession.³¹

A country is entitled to formulate a reservation except if it is prohibited by the treaty; if the treaty states that only specific reservations may be made; or if the reservation is incompatible with the object and purpose of the treaty.³² Although permitted to resort to reservations, unless an exception applies, states are encouraged to avoid this where possible.³³

Article 46 of the CRPD allows for reservations to be placed by state parties, if they are compatible with the object and purpose of the Convention.³⁴ To be valid, a reservation must therefore meet the requirements under article 1 of promoting, protecting, and ensuring the equal enjoyment of all human rights and fundamental freedoms of persons with disabilities, and of promoting respect for their inherent dignity. Reservations may be withdrawn at any time.³⁵

3 The CRPD in a Mauritian context

3.1 Overview

As of 2011, the country comprised of about 59 870 persons with disabilities, representing approximately 4.8 per cent of the general population.³⁶ As per the latest population census at the time of drafting this paper, the most common forms of disabilities in the country are largely physical disabilities, visual impairments, and learning difficulties, accounting for about 42 per cent, 24 per cent and 20 per cent of the

30 Article 2(d) of the United Nations, Vienna Convention on the Law of Treaties, 23 May 1969, United Nations, Treaty Series, vol 1155, p 331. Mauritius adopted the Vienna Convention on the Law of Treaties by way of accession on 18 January 1973.

31 F Shqarri 'Reservations to treaties, prohibited reservations and some unresolved issues related to them' (2015) 6 *Mediterranean Journal of Social Sciences* 97 at 98.

32 Vienna Convention on the Law of Treaties (n 30) art 19.

33 UN General Assembly, Vienna Declaration and Programme of Action, 12 July 1993, UN Doc A/CONF.157/23 (1993) para 26.

34 Article 46(1) of the CRPD.

35 Article 46(2) of the CRPD.

36 Statistics Mauritius 'Housing and Population Census' (2011) 7 https://statsmauritius.govmu.org/Documents/Census_and_Surveys/HPC/2011/HPC_AR_Vol7_Disability_Report_Yr11.pdf (accessed 10 April 2021).

population of persons living with disabilities respectively, while persons with psycho-social disabilities make up for approximately 9.9 per cent of the population of persons with disabilities.³⁷

The CRPD was signed by Mauritius in September 2007 and ratified in January 2010, with reservations placed on articles 9(2)(d), 11 and 24(2)(b).³⁸ There exists legislation in the country catering for disability rights in certain fields.³⁹

However, despite this state party's best intentions as evidenced by the various advancements pertaining to persons with disabilities in Mauritius,⁴⁰ the following points are noteworthy. Firstly, the Constitution of the Republic of Mauritius⁴¹ fails to make any express reference to the protection of disability rights.⁴² The word 'disability' only appears once in the Constitution, as a ground upon which one cannot be discriminated against.⁴³ Moreover, there is no comprehensive piece of legislation aimed at exclusively promoting and protecting the rights of persons with disabilities in Mauritius, despite the obligation under the CRPD to take legislative measures for the implementation of disability rights.⁴⁴ Numerous gaps, discussed throughout this paper, prevail under current laws, which are not in line with the medical model of disability and which add to the stigma already faced by persons with disabilities. Finally, and most importantly, as will be discussed in detail, the reservations placed on the CRPD constitute three crucial aspects of the lives of persons with disabilities. They defeat the purpose of the CRPD by failing to adequately protect and promote the rights, fundamental freedoms, and inherent dignity of persons with disabilities; constitute a discrimination to their rights; and add to the numerous barriers already faced by persons with disabilities in the country.

37 A Budoo & RA Mahadew 'Mauritius: Country Report' (2014) 2 *African Disability Rights Yearbook* 227 at 228.

38 CRPD Committee, Concluding observations on the initial report of Mauritius, 30 September 2015, UN Doc CRPD/C/MUS/CO/1 (2015).

39 These include the Equal Opportunities Act 42 of 2008; the Training and Employment of Disabled Persons Act 9 of 1996; the National Council for the Rehabilitation of Disabled Persons Act 37 of 1986; the National's Pension Act 44 of 1976; the Social Aid Act 2 of 1983; The Society for Welfare of the Deaf Act 37 of 1968; the Lois Lagesse Trust Fund Act 19 of 1983, amongst others.

40 These include, for example, the implementation of low-floored buses for persons with physical disabilities, the use of Braille textbooks in educational institutions, and the increase in pension funds granted to persons with disabilities, amongst others.

41 GN 54 of 1968.

42 Budoo & Mahadew (n 37) 234.

43 Section 16(3) of the Constitution of the Republic of Mauritius was amended in 2016 to prohibit discrimination on the grounds of disabilities. It now defines 'discriminatory' as 'affording different treatment to different persons attributable wholly or mainly to their respective descriptions by race, caste, place of origin, political opinions, colour, creed or sex whereby persons of one such description are subjected to disabilities or restrictions to which persons of another such description are not made subject or are accorded privileges or advantages that are not accorded to persons of another such description'.

44 Global Rainbow Foundation *Building momentum for the disability rights legislation in Mauritius – Learning from the Indian experience* (2020) 6.

3.2 ‘Disability’ under Mauritian laws

As mentioned above, there is no legislation in the country which specifically addresses disability rights law in Mauritius and the Constitution does not provide guidance on the subject matter. Instead, these rights are grounded in other legislation.

Disability is defined under the Training and Employment of Disabled Persons Act⁴⁵ (TEDP Act) as:

To have a long-term physical disfigurement or physical, mental, or sensory disability, including a visual, hearing or speech functional disability, which gives rise to barriers or prejudices impeding his participation at an equal level with other members of society in major life activities, undertakings or fields of employment that are open to other members of society.⁴⁶

Under the Equal Opportunities Act (EOA),⁴⁷ the term ‘disability’ is not used. Instead, the EOA prohibits discrimination on various grounds, including ‘impairment’, which is defined as:

- (a) Total or partial loss of bodily function;
- (b) The presence in the body of organisms that may cause disease;
- (c) Total or partial loss of a part of the body;
- (d) Malfunction of a part of the body, including:
 - (i) A mental or psychological disease or disorder;
 - (ii) A condition or disorder that results in a person learning more slowly than people who do not have a condition or disorder
- (e) Malformation or disfigurement of a part of the body.⁴⁸

Finally, the National Pension’s Act (NPA)⁴⁹ defines the term ‘disabled’ as:

- (a) [...] suffering from a disablement of not less than 60% and resulting from loss of mental or physical faculty;
- (b) [...] suffering from a disablement of not less than 1% and resulting from a loss of mental or physical faculty caused by about industrial accident or a prescribed disease.⁵⁰

These definitions have been highly criticised for failing to effectively represent the paradigm shift to the social model of disability. Not only do they follow the outdated medical approach, but they are also incompatible with the CRPD, the latter explicitly preferring a human-rights approach as

45 Act 9 of 1996.

46 Section 2(a) of the TEDP Act.

47 Act 42 of 2008.

48 Section 2 of the EOA.

49 Act 44 of 1976.

50 Section 2 of the NPA.

explained above.⁵¹ They add to the barriers which persons with disabilities already face. The CRPD Committee has recommended the amendment of these definitions to avoid further use of such derogatory terminology to describe persons with disabilities.⁵² This has not been done to date and fails to portray persons with disabilities as legal subjects.

These definitions are not in line with the social model of disability as established by the CRPD. It is submitted that these definitions, together with the lack of initiative to amend them, have the effect of stereotyping persons with disabilities and impedes on the way they are perceived in society. This puts them at a disadvantage, impacts on their dignity, and represents obstructions to their rights and fundamental freedoms.

3.3 Reservations

The following reservations have been placed on the CRPD:

- (i) Article 9(2)(d), which provides for an obligation on state parties to provide signage in Braille and other easy-to-read and understand forms, in buildings and other facilities open to the public. The ground for reserving this provision related to the heavy financial implications it carried.⁵³
- (ii) Article 11, catering for the obligations on state parties in situations of risk and humanitarian emergencies. It was declared that the Mauritian government was not bound to take measures under this provision, except if permitted under national laws.⁵⁴
- (iii) Article 24(2)(b), relating to the right of children with disabilities to have access to an inclusive education on an equal basis with others and in the communities in which they live. Mauritius stated that this provision would be implemented incrementally with special education.⁵⁵

The next sections discuss what the obligations under these provisions entail; the effect of reservations against these provisions and how they negatively impact persons with disabilities; and the reasons why they should be removed.

51 Concluding observations on the initial report of Mauritius (n 38 above) para 5.

52 Concluding observations on the initial report of Mauritius (n 38 above) para 6.

53 United Nations Treaty Collection 'Convention on the Rights of Persons with disabilities: Declarations and Reservations' at 8 <https://treaties.un.org/doc/Publication/MTDSG/Volume%20I/Chapter%20IV/IV-15.en.pdf> (accessed 26 May 2021).

54 United Nations Treaty Collection (n 53) 8.

55 United Nations Treaty Collection (n 53) 9.

4 Accessibility

4.1 Overview: Articles 3 and 9

Accessibility can be defined in general terms as the ease by which any place, space, item, or service can be entered, exited, approached, reached, understood, interacted with, or otherwise used.⁵⁶ It is a well-established principle under the CRPD and is considered as a pre-requisite for the full integration, inclusion and empowerment of persons with disabilities in society.⁵⁷ The significant weight it holds under the Convention is implied from the fact that it appears both under the general principles listed under article 3, as well as a right of its own under article 9. As far as persons with disabilities are concerned, it denotes the equal access and equal participation in any built environment without facing barriers.⁵⁸

As a general principle, accessibility represents a crucial requirement insofar as the rights of persons with disabilities are concerned, whether these be social, political, civil, economic, or cultural.⁵⁹ It is the central concept which allows persons with disabilities to enjoy their rights effectively and equally.⁶⁰ Accessibility correlates to many other rights and it is therefore imperative to implement this principle properly to ensure that they can be fully enjoyed. It is a key feature to disability rights and should be a priority to state parties, as a failure to uphold this principle would in effect, amount to discrimination.⁶¹ Shortcomings in its implementation would broadly prevent persons with disabilities from enjoying various rights under the CRPD including accessing justice;⁶² living independently;⁶³ having access to information and communication,⁶⁴ education;⁶⁵ health;⁶⁶ habilitation and rehabilitation;⁶⁷ employment;⁶⁸

56 Department of Economic and Social Affairs & Division for Social Policy and Development 'Accessibility and Development: Mainstreaming disability in the post-2015 development agenda' (24 December 2013) https://www.un.org/disabilities/documents/accessibility_and_development.pdf (accessed 11 April 2021).

57 CRPD Committee, General comment 4, Article 24: Right to inclusive education, 2 September 2016, UN Doc CRPD/C/GC/4 (2016).

58 R Sestranetz & L Adams 'Free movement of people with disabilities in South East Europe: An inaccessible right?' (2006) *Handicap International Regional Office for South East Europe* at 11.

59 CRPD Committee, General Comment 2, Article 9: Accessibility, 22 May 2014, UN Doc CRPD/C/GC/2 (2014)

60 General Comment 2 (n 59) 7.

61 As above. Article 2 of the CRPD defines discrimination as 'any distinction, exclusion or restriction on the basis of disability which has the purpose or effect of impairing or nullifying the recognition, enjoyment or exercise, on an equal basis with others, of all human rights and fundamental freedoms'.

62 Article 13 of the CRPD.

63 Article 19 of the CRPD.

64 Article 21 of the CRPD.

65 Article 24 of the CRPD.

66 Article 25 of the CRPD.

67 Article 26 of the CRPD.

68 Article 27 of the CRPD.

enjoying an adequate standard of living,⁶⁹ participating in political and social life,⁷⁰ and participating in cultural life, recreation, sports, and leisure.⁷¹

As a stand-alone right, accessibility allows persons with disabilities to live independently, to participate equally and fully in society, and to enjoy all the other rights set out in the CRPD.⁷² Generally, persons with disabilities face frequent barriers preventing them from enjoying their rights and fundamental freedoms. These can include physical, informational, or communicational barriers.⁷³ For this reason, the CRPD places an obligation on state parties to take all appropriate measures to make the physical environment, transportation, information and communication, and other facilities, wherever situated and which are accessible to the public, equally accessible to persons with disabilities. This is to ensure that persons with disabilities can live independently and participate fully in society.⁷⁴

Article 9 lists the measures to be taken to make accessibility a reality for persons with disabilities.⁷⁵ For purposes of this paper, emphasis is laid on the provision of signage in Braille and other easy-to-read and understand forms in buildings and facilities open to the public.⁷⁶

4.2 Article 9(2)(d) of the CRPD

In addition to physical, institutional, and economic accessibility, article 9 includes the right of persons with disabilities to have access to information and communication.⁷⁷ Accordingly, article 9(2)(d) requires state parties to equip public buildings and facilities with signage in Braille and in easy-to-read and understand forms.

To comprehend what article 9(2)(d) entails in a disability context, it is important to grasp the purposes of signage. Primarily, signage imparts and communicates information; helps in wayfinding; and assists in identifying

69 Article 28 of the CRPD.

70 Article 29 of the CRPD.

71 Article 30 of the CRPD.

72 General Comment 2 (n 59) para 7.

73 UN Division for Social Policy Development & Department of Economic and Social Affairs 'Toolkit on disability for Africa: Accessibility' <https://www.un.org/esa/socdev/documents/disability/Toolkit/Accessibility.pdf> (accessed 11 April 2021).

74 Article 9(1) of the CRPD. This article further states that such measures generally apply to: 'Buildings, roads, transportation and other indoor and outdoor facilities, including schools, housing, medical facilities and workplace' and 'information, communication and other services.'

75 Article 9(2) of the CRPD.

76 Article 9(2)(d) of the CRPD.

77 Federal Ministry for Economic Cooperation and Development 'A human rights-based approach to disability in development: Entry points for development organisations' at 6 https://reliefweb.int/sites/reliefweb.int/files/resources/A_human_rights-based_approach_to_disability_in_development.pdf (accessed 12 April 2021).

specific locations.⁷⁸ Without the appropriate signage and the information it provides, it may become extremely challenging for anyone, particularly persons with disabilities, to move and orientate themselves in public places.⁷⁹ It is thus essential for state parties to make provision for suitable physical planning and adequate signage to provide the requisite access to information and communication to all persons with disabilities.

The intention of 9(2)(d) appears to be the protection of the rights of persons with visual impairments and intellectual disabilities; these categories being more likely to identify places and receive information from Braille devices, pictures, or easy-to-read and understand forms. However, the CRPD Committee has made it clear that the required standards for accessibility should be 'broad and standardised'.⁸⁰ Accessibility is an unconditional right and the mere fact that a particular type of disability was not considered at the time of developing such standard, does not allow for its non-recognition.⁸¹ This provision may therefore well help persons with other types of disabilities. Through article 9(2)(d), the CRPD therefore seeks to ensure that accessibility is imparted to the wide diversity of persons with disabilities, particularly those facing significant barriers as far as orientation and movement are concerned.

To ensure that the right under 9(2)(d) is fully entrenched, signage ideally needs to be included in bathrooms; elevators; entrances and exits; emergency doors and emergency instructions; cautionary signs; bus stops; hotels and rooms; public transports; bus stops; vending machines and similar operating instructions; and parking spaces.⁸² The easiest way to incorporate this article would be by providing signage in Braille, raised pictograms and raised prints.⁸³ Such signs need to be clear and unambiguous, at a reasonable height and at consistent locations.⁸⁴

4.3 Reservation on article 9(2)(d)

Often, the focus and understanding when talking about 'accessibility' tends to be on physical, or 'visible' disabilities.⁸⁵ Article 9(2)(d) seeks to redress the issue of accessibility for persons whose disabilities are not readily

78 Advanced Multi Sign 'Signage and its purpose' <https://advancedmultisign.com/signage-and-its-purposes/> (accessed 12 April 2021).

79 General Comment 2 (n 59) 6.

80 General Comment 2 (n 59) 8.

81 A above.

82 Blind Foundation 'Accessible signage guidelines' (2013) 3 <http://content.aucklanddesignmanual.co.nz/resources/park-elements/general-signage/Documents/Signage-Accessible-Signage-Guidelines-2013.pdf> (accessed 12 April 2021).

83 Blind Foundation (n 82) 4.

84 As above.

85 Mental Health Europe 'More than a ramp: Rethinking accessibility for persons with psychosocial disabilities' (2020) 2 <https://www.mhe-sme.org/new-reflection-paper-accessibility/> (accessed 13 April 2021).

visible and aims at protecting the wider community of persons with disabilities, to include those with other types of disabilities.

Placing a reservation on article 9(2)(d) limits the scope of accessibility to a certain category of persons with disabilities, as it fails to consider the diversity of people and the obstacles they commonly face.⁸⁶ Of note, the Republic of Suriname is the only other state party to have placed a reservation on this provision in light of its heavy financial implications.⁸⁷ In effect, this reservation acts as an attitudinal barrier which prevents certain persons with disabilities from having access to public places, or from making full and equal use of their rights. It also discriminates against a certain group of persons with disabilities who may face similar difficulties in orientation, movement, and communication. This prevents them from having access to the information they require to move around and consequently requires them to be dependent on third parties to do so. For example, a person with visual impairments would require some sort of personal assistance in a public place where no signage in Braille is available. The lack of signage as required under 9(2)(d) could similarly pose a problem to various other persons with disabilities who may face comparable difficulties of orientation. Considering the diversity of persons with disabilities is critical when dealing with accessibility, ignoring this can go as far as giving the impression that the experiences and barriers faced by certain categories of persons with disabilities lack legitimacy in the eyes of the state.⁸⁸

For these reasons, it is submitted that the reservation placed on article 9(2)(d) by Mauritius represents a discrimination to those concerned by preventing them from enjoying a full range of rights and fundamental freedoms under the CRPD.⁸⁹ It impedes the full inclusion and integration of a certain class of persons with disabilities by failing to provide the required standards of accessibility in public environments. Given the fact that out of the three most prevailing types of disabilities in Mauritius, two pertaining to persons living with visual impairments and learning difficulties, it is crucial to take suitable measures to afford them with the full enjoyment of their right to accessibility.

Although complying with article 9(2)(d) can occasion important financial expenses, barriers relating to the issue of accessibility need to be removed gradually, but steadily.⁹⁰ While all new buildings must meet the universal design which make them accessible to all persons with

86 Mental Health Europe (n 85) 2.

87 The Republic of Suriname ratified the CRPD in 2017 and made the following declaration while doing so in respect of Article 9: '[T]he Government of the Republic of Suriname declares that it shall not for the time being take any of the measures provided for in Article 9 paragraph 2 (d) and (e) in view of their heavy financial implication'.

88 Mental Health Europe (n 85) 4.

89 See (n 62 to 71 above).

90 General Comment 2 (n 59) 8.

disabilities, state parties must plan a timeframe within which to remove existing barriers.⁹¹ There have been some positive changes in this regard over the past few years in Mauritius. The Building Control (Accessibility and Gender Compliance in Buildings) Regulations, adopted in 2017⁹² make reference to the provision of audible features and visual signage, including Braille, for automated teller machines and lifts in buildings such as museums, banks, cinema, and police stations,⁹³ and of visual and audible systems in lifts, lobbies and fire alarm systems.⁹⁴ It also provides for communication aids such as assistive listening systems in conference and assembly areas as well as tactile systems to gain admittance to buildings.⁹⁵ This indicates a propitious change as far as the issue of accessibility for all persons with disabilities is concerned, and good faith from the state party to move forward to reduce the difficulties faced by persons with disabilities in the country. With the promulgation of these new Regulations, the government announced that it would consider withdrawing the reservation on article 9(2)(d).⁹⁶

In its 'Combined Second and Third Report of the Republic of Mauritius' of 2020 (hereinafter referred to as 'the 2020 Report'), the Mauritian government has indicated that, following the coming into force of the Building Control (Accessibility and Gender Compliance in Buildings) Regulations which are in line with the accessibility requirements of the CRPD, it could consider withdrawing from this reservation.⁹⁷ As such, there is no longer any reason to keep the reservation on article 9 now that the Building Control Regulations have been implemented. Withdrawing this reservation would afford a greater protection for persons with disabilities in Mauritius: It would finally recognise the true diversity of persons with disabilities and stop the discrimination against certain groups of persons with disabilities who are, and will, continue to be denied the full enjoyment of their right to accessibility while this reservation prevails. It would also reiterate the Mauritian government's intention to take all necessary measures to comply with the principles established by the CPRD, particularly that of accessibility. Withdrawing would reinforce the commitment of the Mauritian government to bind itself to take such additional measures that would ensure that accessibility is afforded equally to all persons with disabilities, such as applying this provision to all buildings in the country, both old and new, as well as updating current legislation in this regard to

91 As above.

92 The Building Control Act, Government Notice 215 of 2017.

93 Building Control (Accessibility and Gender Compliance in Buildings) Regulations 2017 schedule 1.

94 Building Control Regulations (n 103) schedule 1.

95 Building Control Regulations (n 103) schedule 2(j).

96 Concluding observations on the initial report of Mauritius (n 38 above) para 7.

97 UNCRPD 'Combined Second and Third Report of the Republic of Mauritius' Annex 2 at 5 https://tbinternet.ohchr.org/Treaties/CRPD/Shared%20Documents/MUS/CRPD_C_MUS_2-3_7812_E.docx (accessed 18 May 2021).

reflect non-accessibility as discrimination, and to provide persons with disabilities with legal remedies in cases of breach of their rights, as formulated by the CRPD Committee.⁹⁸

5 Situations of risk and humanitarian emergencies

5.1 Overview: Article 11 of the CRPD

Persons with disabilities are generally at higher risks, and are more likely to be negatively impacted in cases of disaster, emergency, and conflict.⁹⁹ This is particularly the case where assistance, communication, evacuation response or recovery efforts are inaccessible.¹⁰⁰ Article 11 deals with the obligations imposed in situations of risk, including armed conflict, humanitarian emergencies, and natural disasters, and requires state parties to take all the measures which are necessary to protect persons with disabilities in these cases.

The Sendai Framework for Disaster Risk Reduction,¹⁰¹ deals exclusively with the issue of risk reduction and was adopted by the UN in 2015. It highlights the targets and priorities which should be considered to prevent and reduce risks, and the CRPD Committee has expressed the need to take measures as set out under this framework to meet the objectives of article 11.¹⁰²

The duties under article 11 includes taking several measures to protect persons with disabilities, which have been set out by the CRPD Committee. Primarily, these include:

- (i) The active consultation and involvement of persons with disabilities when taking steps related to reduction of risks and humanitarian protocols and strategies;¹⁰³

98 As above.

99 Charter on Inclusion of Persons with Disabilities in Humanitarian Action (2016) <http://humanitariandisabilitycharter.org/> (accessed 18 May 2021).

100 UN DSPD & DESA (n 73) 14.

101 UNDRR 'Sendai Framework for Disaster Risk Reduction 2015-2030' (2015) <https://www.undrr.org/publication/sendai-framework-disaster-risk-reduction-2015-2030> (accessed 25 April 2021).

102 IDA & Handicap International Humanity and Inclusion & CBM 'Article 11 of the Convention on the Rights of Persons with Disabilities (CRPD): Legal frameworks guiding inclusive humanitarian action and guidance for CRPD reporting' (2020) 12 https://www.internationaldisabilityalliance.org/sites/default/files/article-11-of-the-crpdc-legal-frameworks-guiding-inclusive-humanitarian-action-reporting-guidance_final-version.pdf (accessed 14 April 2021).

103 UN Human Rights Council (UNHRC), Thematic study on the rights of persons with disabilities under article 11 of the Convention on the Rights of Persons with Disabilities, on situations of risk and humanitarian emergencies, UN Human Rights Council, 30 November 2015, UN Doc A/HRC/31/30 (2015); IDA et al (n 102) 18.

- (ii) The need for Risks Reduction and Disaster Management strategies to be inclusive and accessible;¹⁰⁴
- (iii) The adequate, accessible, and timely provision of information related to disaster risks and humanitarian emergencies through mass media;¹⁰⁵
- (iv) Ensuring the protection of life and safety by providing assistive devices and accessible applications, shelters and similar facilities, social and health support, trained rescue teams, and accessible communications channels;¹⁰⁶
- (v) Taking all steps to make post-emergency rehabilitation, resettlement, reconstruction, and rebuilding processes inclusive and accessible;¹⁰⁷ and
- (vi) Training all emergency personnel involved on the situation faced by persons with disabilities.¹⁰⁸

The key to meeting the requirements of the CRPD is to ensure close consultation and active participation as far as implementation of legislation under article 11 is concerned.¹⁰⁹ It is not sufficient to merely consult with persons with disabilities – they must be meaningfully involved in all processes of decision-making; be given the opportunity to voice their opinions; and identify any issues pertaining to them.¹¹⁰ Where this is not done, persons with disabilities must be entitled to make complaints.¹¹¹

Essentially, the choices made during the pre-emergency phases are vital, as they are those that will eventually mitigate human suffering and which will help in reconstruction during the critical phases of an emergency.¹¹² Equality, non-discrimination, and reasonable accommodation and accessibility are accordingly of utmost relevance under article 11.¹¹³ Persons with disabilities should have equal access to all the measures taken by a state party as far as risk reduction is concerned, and emergency services must be accessible and inclusive at all materials times.¹¹⁴ The rationale behind upholding these principles is to better protect persons with disabilities in case of risk, as they would be best suited to provide any recommendations on inclusion and accessibility; to raise awareness on issues that they face; and to work on a universal design which would suit all persons with disabilities, being the ones primarily concerned and affected.¹¹⁵

104 UNHRC (n 103) para 9; IDA et al (n 102) 18.

105 UNHRC (n 103) para 6; IDA et al (n 102) 18.

106 UNHRC (n 103) para 56; IDA et al (n 102) 18.

107 UNHRC (n 103) para 29; IDA et al (n 102) 18.

108 UNHRC (n 103) para 53; IDA et al (n 102) 18.

109 UNHRC (n 103) para 9; IDA et al (n 102) 18.

110 IDA et al (n 102) 20.

111 As above.

112 As above.

113 UNHRC (n 103) para 9.

114 General Comment 2 (n 59) para 36.

115 IDA et al (n 102) 23.

5.2 Reservation on article 11

By putting a reservation on article 11, persons with disabilities are under a higher threat of being exposed to abuse, neglect, and abandonment in cases of risk and humanitarian emergencies. In its country report submitted in 2010, Mauritius declared that despite the reservation, the country was conscious of the needs of persons with disabilities.¹¹⁶ It stated that the country was peaceful, and the only potential risks were natural disasters, such as cyclones or torrential rains in a few exposed areas, which would be adequately catered for.¹¹⁷

The Mauritius Disaster Risk Profile estimates that cyclones represent the biggest risk to Mauritius, followed by floods and earthquakes.¹¹⁸ In recent times, the country has become more vulnerable to an increasing frequency of cyclones, torrential rains, and flash floods which have been representing a threat to the lives of many people.¹¹⁹ At least one cyclone with a wind speed of more than 120km/h hits the island every year, while an average of four cyclones form at summertime.¹²⁰ The annual loss caused by cyclones, earthquakes and floods have been calculated to amount to approximately US\$110M.¹²¹ This number provides an indication of the severity of natural disasters on the country. To illustrate this point, 11 people were killed in Mauritius as a result of flash floods in 2013, while some 259 people were displaced in Rodrigues Island in 2019 due to a severe cyclone with gusts of 165km/h which caused major flash floods and property damage.¹²² In 2021, several regions in Mauritius have been frequently and severely affected by heavy rains, affecting both people and property.¹²³

In response to the increasing risk posed by natural disasters, the National Risk Reduction and Disaster Management Act (NRRDM Act)¹²⁴ came into force in 2016, and the National Disaster Risk Reduction

116 Republic of Mauritius 'Country Report to the Third Conference of State Parties to the UN Convention on the Rights of Persons with Disabilities' (1-3 September 2010) 4 <http://www.un.org/disabilities/documents/COP/COP3/best%20practices/mauritius%20-%20Report%20CRPD.doc> (accessed 18 May 2021).

117 Mauritius Country Report (n 116) 5.

118 PreventionWeb 'Disaster risk profile: Mauritius' (2016) <https://www.preventionweb.net/publications/view/52172> (accessed 15 April 2021).

119 UN Environment Program 'Reducing climate change and disaster risk in Mauritius' (2019) <https://www.unep.org/news-and-stories/story/reducing-climate-change-and-disaster-risk-mauritius> (accessed 15 April 2021).

120 Clever Dodo 'Cyclones in Mauritius' (2011) <https://mauriblog.cleverdodo.com/t/13877/cyclones-in-mauritius#:~:text=As%20Mauritius%20is%20found%20in%20the%20inter%20tropical,Gervaise%20cyclone%20devastation%20in%201975%2C%20picture%20credit%20hunneybell.com> (accessed 15 April 2021).

121 PreventionWeb (n 118).

122 UN Environment Program (n 119).

123 'Mauritius Issues Disaster Alert Over Heavy Rains' *Arise News* 28 April 2021; 'Mauritius – Flash Floods in South East After 400mm of Rain in 24 Hours' *Floodlist* 16 April 2021.

124 Act 2 of 2016.

Management Centre was set up to act as a focal point for risk reduction. While both aim at mitigating risk in case of disaster, DPOs have reported that persons with disabilities were neither consulted nor engaged in their implementation; that there have been no data collection as to how many persons with disabilities may require assistance in cases of risk; and that the personnel involved in evacuation have not been trained to deal with persons with disabilities.¹²⁵ In fact, the NRRDM Act does not make any express reference to persons with disabilities and only mentions the evacuation of ‘persons at risk’ which, according to the CRPD Committee, can be generally deemed to include persons with disabilities.¹²⁶

Although provision has been made for ‘persons at risk’, it is submitted that the legislation relating to situations of risk is not sufficiently inclusive and accessible for persons with disabilities. There is no other policy or framework specifically designed for the evacuation of persons with disabilities, which constitutes a massive restriction to the protection afforded to persons with disabilities under article 11. The concerned authorities indicated an intention of removing the reservation once the NDRRM Act came into force,¹²⁷ but this has still not been done.

A reservation on this provision means that persons with disabilities may not be afforded necessary protection in cases of risk. As there was no prior consultation with them, it is difficult to foresee what kind of special measures have been contemplated, if any, for persons with disabilities. Not only does the reservation represent a barrier to the safety of persons with disabilities, but it also relieves the state party from abiding to its obligations under the CRPD, representing a discrimination on persons with disabilities. As long as this reservation is in force, the state is not bound to take any additional measures to accommodate for the needs and safety of persons with disabilities in case of risk and emergencies. With climate change and the growing risk for natural disasters, it has become more important than ever to take the appropriate precautions to ensure the equal safety of all citizens, especially persons with disabilities, being more exposed in such risks. This will not be possible if the reservation prevails. Only if removed, will the state be bound to take all adequate measures required under article 11 to ensure the equal, inclusive, and accessible safety of all. For now, the NDRRM Act is insufficient on its own and more is needed to harmonise risk reduction for persons with disabilities with the spirit of the CRPD, even though the government has indicated in the 2020

125 Voice of Disabled People International ‘Mauritius Shadow Report on the UN Convention on the Rights of Persons with Disability’ (2013) para 17 https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2fCRPD%2fACS%2fMUS%2f35602 (accessed 18 May 2021).

126 Section 16(1)(b) of the NDRRM Act; CRPD Committee, Concluding Observations on the initial report of Mauritius: Addendum – Information received from Mauritius on follow-up to the concluding observations, 27 November 2017, UN Doc CRPD/C/MUS/CO/1/Add.1 (2017) para 9.

127 Concluding observations on the initial report of Mauritius (n 38 above) para 6; Concluding Observations on the initial report of Mauritius Addendum (n 126) para 9.

Report that the reservation could now be removed in light of the NDRRM Act.¹²⁸

6 Right to education

6.1 Overview: Article 24 of the CRPD

The right to education is generally considered as a pre-requisite for the enjoyment of other rights.¹²⁹ Article 24 provides for the right to education on an equal basis, based on the principle of non-discrimination and equality. It introduces the concept of inclusive education, with the intention of including persons with disabilities in the general system of education, as equal members of society. An inclusive education is that which will generally strengthen the autonomy of persons with disabilities, reinforce their participation in society, empower them in life, and lessen any marginalisation they may face.¹³⁰

Being a socio-economic right, education is subject to a progressive realisation under article 4 of the CRPD.¹³¹ State parties have a duty to take steps in the realisation of the right to education under article 24, and the concept of 'inclusive education' is one which can be established progressively, but steadily.¹³² State parties do however have certain other obligations, including the duty not to discriminate, which require immediate implementation, regardless of the amount of resources available.¹³³

For purposes of this provision, emphasis is specifically laid on the situation of children with disabilities in Mauritius and the impact of the reservation on article 24(2)(b) on them.

6.1.1 *Inclusive education and special education*

To understand the current position in Mauritius, and the extent to which the country has complied with the duty under article 24, it is necessary to analyse the concept of inclusive education as required by the CRPD.

128 Combined Second and Third Report of the Republic of Mauritius (n 97).

129 C O'Mahony *Education rights in Irish law* (2006) 18.

130 G de Beco 'Transition to inclusive education systems according to the CPRD' (2016) 34 *Nordic Journal of Human Rights* 40.

131 A Broderick & S Quilivan 'The right to education: Article 24 of the CRPD' in C O'Mahony & G Quinn (eds) *Disability law and policy: An analysis of the UN Convention* (2017) 2.

132 As above.

133 Committee on Economic, Social and Cultural Rights, General Comment 3: The nature of state parties' obligations (Art 2, Para 1, of the Covenant), 14 December 1990, UN Doc E/1991/23 (1990) para 1.

A note should consequently be made on the distinction between an inclusive education system, as opposed to a 'special' system of education.

The CRPD Committee distinguishes inclusion from exclusion, segregation, and integration. The latter three generally fall under the category of education predominantly known as 'special education' in Mauritius. In essence, exclusion is the denial of any form of education to persons with disabilities, whether directly or indirectly; segregation means providing access to education in a separate environment, isolated from learners with no disabilities; and integration is to place children with disabilities in the mainstream education system, but only if they can adjust to the requirements of the institution.¹³⁴ These systems largely provide a lower standard of education and lessen the learners' chances upon becoming adults.¹³⁵ Conversely, inclusion recognises that all children should work together, notwithstanding any difficulties or differences they may experience, and at all levels of education.¹³⁶ The right to an inclusive education requires state parties to provide equal and inclusive access to education to all learners with disabilities, at all levels of education.¹³⁷ Such a system has been proved to be advantageous not only to students, but also families, teachers, and communities.¹³⁸

The right under article 24 makes express reference to that of an inclusive education.¹³⁹ The CRPD Committee views exclusionary and segregated education as a form of discrimination and has recommended state parties to replace segregated systems by that of inclusive education.¹⁴⁰ The CRPD itself does not provide any indication of what such a system entails, but the CRPD Committee has provided that in addition to being an underlying human right to all learners, it is also a means of realising other rights, and is a fundamental principle valuing the well-being of all students.¹⁴¹ It is a way to eliminate the barriers to

134 General Comment 4 (n 57) para 11.

135 G de Beco 'The right to inclusive education: Why is there so much opposition to its implementation?' (2018) 143 *International Journal of Law in Context* 1.

136 The Salamanca Statement and Framework for action on Special Needs Education (1994) <https://unesdoc.unesco.org/ark:/48223/pf0000098427> (accessed 19 April 2021).

137 As above.

138 See R Rieser *Implementing Inclusive Education: A Commonwealth Guide to Implementing Article 24 of the UN Convention on the Rights of Persons with Disabilities* 2nd ed (2012) 289-291. Inclusive education provides the right support to succeed academically and socially; represents a greater chance to be part of the labour market, and increases the tolerance of society towards persons with disabilities, amongst others.

139 Article 24(1) of the CRPD states as follows: 'States Parties shall ensure an inclusive education system at all levels and lifelong learning'.

140 CRPD 10 Years 'Towards inclusive equality: 10 Years Committee on the Rights of Persons with Disabilities' (2018) 60 https://tbinternet.ohchr.org/Treaties/CRPD/Sha red%20Documents/1_Global/INT_CRPD_INF_21_28325_E.pdf (accessed 15 April 2021).

141 General Comment 4 (n 57) para 10.

education for persons with disabilities, as well as to accommodate all students in regular schools.¹⁴²

In order to achieve the goals set out under the CPRD, a rigorous transformation in culture, policy and practice is necessary.¹⁴³ This requires a revision in existing legislation, policies and mechanisms related to education, and the removal of all barriers which could prevent realising these objectives.¹⁴⁴ Primarily, the right to an inclusive education prioritises 'the full and effective participation, accessibility, attendance and achievements of all students', particularly those who are more likely to be marginalised, or excluded.¹⁴⁵ It is noteworthy that there is a general misconception about the resources involved in maintaining an inclusive system. In truth, inclusive systems have been found to be more economical than segregated systems of education and could in fact be as seven to nine times cheaper.¹⁴⁶ In addition to being beneficial to the learners concerned, inclusive education is thus also reasonably affordable to sustain, as opposed to segregated systems of education.¹⁴⁷

Insofar as Mauritius is concerned, it follows mostly a segregated system of education and the country has been found to be slow in implementing its policy on inclusive education.¹⁴⁸ As a matter of fact, the Special Education Needs Authority Act (SENA Act)¹⁴⁹ came into force in 2018 and oversees all aspects of special institutions in Mauritius. Under this Act, no provision has been made for the development and promotion of inclusive education, even though an inclusive education system was intended to operate alongside that of special education until mainstreaming had been totally implemented in the country.¹⁵⁰

To summarise, as of 2021 and despite having ratified the CRPD, Mauritius had barely adhered to the principle of inclusive education set out under article 24, and still followed for the most part, a special system of education.

142 As above.

143 General Comment 4 (n 57) para 9.

144 As above.

145 As above.

146 G de Beco 'The right to inclusive education according to article 24 of the UN Convention on the Rights of Persons with Disabilities: Background, requirements and (remaining) questions' (2014) 32 *Netherlands Quarterly of Human Rights* 263 at 276.

147 As above.

148 Concluding observations on the initial report of Mauritius (n 38 above) para 33.

149 Act of 2018.

150 Consideration of Reports submitted by State Parties under article 35 of the Convention, Initial reports of State parties due in 2010: Mauritius (n 5) para 11.

6.2 Article 24(2)(b): ‘The right to a free, quality and inclusive education in the community they live in’

Article 24(2)(b) deals with the right of persons with disabilities to be entitled to free, inclusive, and quality education in the community they live in, and on an equal basis with others. It derives from the understanding that all children are entitled to be accommodated in the mainstream system of education, regardless of their abilities, or any requirements they may need.¹⁵¹ It also provides for the right of children with disabilities to enrol in schools within their communities.

To fulfil the obligation under 24(2)(b), the CRPD Committee has stated that an education system must comply with the ‘4-As Framework’ of education: Availability, accessibility, acceptability, and adaptability.¹⁵² Although this framework has not been formally adopted for children with disabilities in particular, it provides guidance on the measures to be taken to comply with the duties set out by article 24(2)(b).¹⁵³

6.2.1 The ‘4-As’ Framework

Availability

Institutions and programmes for persons with disabilities ‘must be available in sufficient quantity and quality’.¹⁵⁴ This concept requires schools to be readily available within a child’s community, or where he or she resides, to ensure that children are not inconvenienced by having to travel long distances to attend school. Educational places, infrastructure and learning materials should also be generally available at all levels in the community.¹⁵⁵

Accessibility

All persons with disabilities should have equal access to places of education without discrimination.¹⁵⁶ As previously discussed, accessibility is a central feature of the CRPD. Making education accessible is wide-ranging and encompasses physical accessibility, economic accessibility, and reasonable accommodation.¹⁵⁷

151 UN Division for Social Policy Development & Department of Economic and Social Affairs (n 73) 4.

152 General Comment 4 (n 57) para 19.

153 De Beco (n 146) 280.

154 General Comment 4 (n 57) para 20.

155 As above.

156 As above.

157 UN DSPD et al (n 151) 5.

The educational environment must firstly be physically accessible, and guarantee equality and safety.¹⁵⁸ To achieve physical accessibility, state parties should adhere to the principle of Universal Design; ban any buildings which are inaccessible to persons with disabilities; put in place new technologies; and commit to establishing a timeframe and monitoring mechanism within which to comply with this design.¹⁵⁹ Resources should also be allocated for textbooks and materials to be provided in accessible formats.¹⁶⁰

As far as economic accessibility is concerned, education should be affordable to persons with disabilities.¹⁶¹ This means that if the general system of education is free in a state, it should be equally free for persons with disabilities. The same applies for reasonable accommodation, which should be a priority matter, and free of charge.¹⁶²

Acceptability

Acceptability requires the form and substance of education to be designed in such a way to accommodate all cultures, views, and languages of children with disabilities.¹⁶³ Education should be acceptable to everyone involved and must not belittle anyone involved. State parties therefore have a duty to ensure that education complies with what is acceptable to those concerned and that it conforms with any of their requirements.¹⁶⁴ This applies to any facilities, goods, and services related to the education system.¹⁶⁵

Adaptability

Adaptability calls for the education system to be flexible and to meet the needs of all learners.¹⁶⁶ This can be achieved by applying the Universal Design for Learning, which considers the diversity of learners.¹⁶⁷ The Universal design requires that curricula be conceived to meet the requirements of all students; that standard assessments be replaced by various forms of assessments; and that broader goals be designed to

158 General Comment 4 (n 57) para 21. This includes transport, water, sanitation, cafeterias, and recreational spaces.

159 General Comment 4 (n 57) para 21.

160 General Comment 4 (n 57) para 22. For instance, provision should be made for Braille, ink or digital formats.

161 General Comment 4 (n 57) para 23.

162 De Beco (n 130) 57.

163 General Comment 4 (n 57) para 24.

164 General Comment 4 (n 57) para 23.

165 As above. For example, provision should be made for sign language to conform with language requirements where the education system consists of deaf learners. The same applies for learning material – Where learners with visual impairments are concerned, learning materials and teaching methods should be provided in alternative formats.

166 General Comment 4 (n 57) para 24.

167 As above.

provide alternative ways of learning. The system should also be flexible to meet the demands of children with disabilities in a particular area and accommodate for children with disabilities in any given community.

6.3 Reservation on article 24(2)(b)

Reservations against article 24(2)(b) prevent children with disabilities from accessing the type of education that will enable them to enjoy their rights and fundamental freedoms and to participate in society. It creates a big inconvenience in terms of where to access such education and entitles state parties to allow for children with disabilities to attend school outside their communities, which is vastly discriminatory.¹⁶⁸ The reservation disregards the need for the education system to be accessible, available, adaptable, and acceptable to those involved. It renders the lives of children with disabilities and their families problematic by allowing the state party to overlook the many challenges they may already face, especially that of displacing children from their communities and travelling over long distances daily.

In 2018, Mauritius consisted of 318 primary schools;¹⁶⁹ 178 secondary schools;¹⁷⁰ 111 pre-vocational schools;¹⁷¹ and 72 Special Educational Schools,¹⁷² the latter representing approximately 10 per cent of the total number of schools in the country. The number of children with disabilities who enrolled in Special Education Schools that year amounted to 2 656.¹⁷³ Given the fact that Mauritius follows mostly a segregated approach, and in accordance with the above numbers, the reservation means that a great number of children with disabilities around the country find themselves having to travel over long distances to get to school. In its 2015 Report, the CPRD Committee raised concerns about the fact that many children in rural areas did not have access to public transport and were not being reimbursed for the costs of transportation to travel to school.¹⁷⁴ The reservation therefore represents an additional barrier to those living in more remote areas of the country: Many neither have access to proximate schools, nor public transportation, infringing on their right to have access to education on an equal basis with others.

While a special system of education is not specifically precluded by the CRPD, it is generally not recommended, considering the social model of

168 *European Action of the Disabled (AEH) v France* ECHR Complaint 81/2012 (11 September 2013). The ECSR held that it was a direct discrimination for children with autism to travel from France to Belgium to receive vocational training.

169 Stats Mauritius 'Education Statistics – 2018' at 3 https://statsmauritius.govmu.org/Documents/Statistics/ESI/2018/EI1406/Edu_Yr18.pdf (accessed 20 April 2021).

170 Stats Mauritius (n 157) 5.

171 Stats Mauritius (n 157) 6.

172 Stats Mauritius (n 157) 7.

173 As above.

174 Concluding observations on the initial report of Mauritius (n 38 above) para 33.

disability. An inclusive education is that which meet the general principles set out under article 3, and that which will entitle persons with disabilities to fully enjoy their rights. While this right may take time to be fully achieved and may not be possible immediately, it has been highly recommended by the CRPD Committee and can be implemented progressively.¹⁷⁵

Although Mauritius has a policy on inclusive education since 2006, the CRPD Committee found that the country had been slow in its implementation.¹⁷⁶ With the SENA Act now in force, the question arises as to how the specialised system of education, which has now been grounded into the Mauritian system, will be reconciled with an inclusive education system. The SENA Act is in complete contradiction with the requirements of article 24 and inevitably results in children with disabilities being completely deprived of the quality and inclusive education required under article 24. It appears to be reinforcing the special system of education in the country, rather than showing any intention of stepping away from it and moving towards total mainstreaming. Not only does this new legislation delay the process of fulfilling the obligations set out under article 24, but it also prevents the full inclusion of persons with disabilities in the education system and fails to abide to the principles of equality and non-discrimination.

It was declared in the 2020 Report that, following the adoption of the policy for inclusive education in 2006, some steps had been taken to improve the situation of persons with disabilities in the education sector.¹⁷⁷ According to the 2020 Report, only once the Policy had fully been complied with, would Mauritius consider removing the reservation on article 24. Until then, a system of special education together with one of inclusive education would run side by side.¹⁷⁸

In this regard, it is submitted that the reservation on article 24(2)(b) supplements to these already existing barriers by failing to make a step further towards inclusion by abolishing all systems of special education as recommended by the CRPD Committee. These obstacles can be removed if the state party takes actions to abolish all systems of special education, by withdrawing the reservation on this provision.

175 Broderick & Quilivan (n 131) explain that being a socio-economic right, art 24 is subject to a progressive realisation.

176 As above.

177 'Combined Second and Third Report of the Republic of Mauritius' (n 97).

178 Concluding observations on the initial report of Mauritius (n 38) para 11.

7 Incompatibility of the reservations with article 1

The reservations placed on articles 9, 11 and 24 seek to exclude the legal effect of these provisions in Mauritius. Under article 46(1) of the CRPD, reservations are only permissible if they are compatible with the purpose and the object of the Convention, as set out at paragraph 2.2 above.

As discussed, the reservations which have been placed on the CRPD are not in the best interests of persons with disabilities in the country. They represent additional barriers in a world that is striving every day to remove the stigma of how persons with disabilities are perceived, and supplement to the issues which they are already facing. They appear to be sustaining an outdated system which impedes the rights and fundamental freedom of persons with disabilities. All three provisions pertain to important rights which have a vital role to play in the lives of persons with disabilities. They correlate to the general principles and rights set out under the CRPD and represent a discrimination by infringing on the enjoyment of the rights and fundamental freedoms sought for persons with disabilities by the CRPD.

In fact, accessibility and education of persons with disabilities both play an important role in the integration of persons with disabilities in society. They entitle persons with disabilities to enjoy all their other rights and allow them to be full and equal participants in society. The reservations against these provisions therefore go against the very spirit of the CRPD by failing to provide suitable safeguards to their rights and inherent dignity of persons with disabilities in the country. The same applies for situations of risk which is vital for the protection of persons with disabilities who may be more affected, given that the present measures are not accessible and inclusive. Reservations against article 11 creates a risk of being left behind in such instances and puts the lives of persons with disabilities in danger.

The reservations placed by Mauritius on the CRPD thus prevent persons with disabilities from being recognised as equal members of society, for all the reasons listed throughout this paper. They are incompatible with the purpose and object of the CRPD as they represent obstructions to the protection and the promotion of the rights of persons with disabilities, their fundamental freedoms, and their inherent dignity. The reservations conflict with the very essence of the CRPD and are therefore contradictory to the purpose and object as set out under article 1 of the CRPD.

This state party's steps to improve the situation of persons with disabilities are acknowledged, although the pace at which these are being taken pose a problem for the future of persons with disabilities in the country. A whole decade has passed since the implementation of the CRPD, and since then, only a few innovations have been noted regarding

the full inclusion of persons with disabilities, while three reservations remain in force. Moreover, as pointed out in this paper, the fact that the government has approved the establishment of a body which has as sole purpose the advancement of a special education system, the question of how to move towards a fully inclusive education system, and consequently the withdrawal on the reserved article 24(2)(b), remains intact. Till now, the implementation of policy on inclusive education has been unrushed and with the new SENA Act, total mainstreaming seems far-fetched in the forthcoming years.

The country has made it clear that it would only accede to the Optional Protocol once all reservations had been removed. Similarly, the reservation on article 24 will only be removed 'in due course', persons with disabilities in Mauritius will not be afforded with the protection of the Optional Protocol and its benefits, for the time being. This denies them of the right to make complaints about violations of their rights to the CRPD Committee and prevents the CRPD Committee from making inquiries on systematic violations of the CRPD in the country.¹⁷⁹ Persons with disabilities are currently only left with national remedies although to this date and despite the many challenges they face, there has been no single recorded case law relating to disability in Mauritius.¹⁸⁰ It is submitted that this generally prevent persons with disabilities from enjoying their human rights and fundamental freedoms on an equal basis with others, contrary to the object and purpose of the CRPD.

In its initial report submitted in 2010, the government mentioned the introduction of a Disability Bill which aimed at promoting and protecting the rights of persons with disabilities in line with the CPRD.¹⁸¹ This Bill formed part of the Government Programme for the years 2012-2015. Although some steps have been taken in its drafting, the Bill has still not been implemented in 2022.¹⁸² Concerns were raised about the pace at which the Bill was being drafted; the fact that the Bill was not in the public domain; and that it had not been drafted in consultation with DPOs and NGOs.¹⁸³ While waiting for the removal of the reservations placed on the CRPD, its full protection, and that of its Optional Protocol, it can only be hoped that the Disability Bill, when promulgated, will address immediate and pressing gaps in the law, including the medical approach; accessibility in all buildings; reconciling inclusive education with special education;

179 UN General Assembly, Optional Protocol to the Convention on the Rights of Persons with Disabilities, 13 December 2006, A/RES/61/106, Annex II at 6.

180 Repository on Disability Rights in Africa 'Mauritius: Updated Country Report' para 5 <http://rodra.co.za/index.php/country-reports-mauritius/23-countries/mauritius/63-mauritius> (accessed 4 December 2022).

181 Consideration of Reports submitted by State Parties under article 35 of the Convention, Initial reports of State parties due in 2010: Mauritius (n 5) para 11.

182 Global Rainbow Foundation (n 44) 10.

183 As above.

and effective remedies and bodies for persons with disabilities in cases of breaches of their rights.

8 Conclusion

This paper discussed the reservations placed by Mauritius on the CRPD, in addition to some issues and prejudices already suffered by persons with disabilities in the country. It reviewed the reservations on article 9(2)(d), 11 and 24(2)(b) in a Mauritian context. Essentially, it concludes that the reservations on these provisions are incompatible with the object and purpose of the CRPD because they relate to important aspects of the lives of persons with disabilities. As previously explained, the object and purpose of the CRPD is to ensure that persons with disabilities are afforded with the equal protection and promotion of *all* human rights, on an equal basis with others. The abovementioned reservations impede on this purpose, preventing certain categories of persons with disabilities from being equally entitled to their human rights. Although some new measures have been put in place since 2010 in this regard, these are generally neither accessible, nor inclusive, and do not protect and promote the rights of persons with disabilities as intended by the CRPD.

The pace at which the country is taking measures to remove these reservations is also extremely lengthy and prevents persons with disabilities from having access to the full range of rights and fundamental freedoms under the CRPD. It is submitted that this will not be possible until the state party takes the initiative to bind itself to take all measures in these three fields by removing the said reservations. For now, the reservations add to the stigma faced by persons with disabilities in the country and should be removed for the full inclusion and integration of persons with disabilities in society. National laws alone are insufficient to achieve these goals for the time being.