



IE+ Training Course: Chapter I

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Chapter Authors:

Alana Cavalcante, Plena Inclusión

Amalia San Roman, Plena Inclusión

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1. International rights framework

The purpose of this chapter is to provide a basic European and international framework of the right to inclusive education in the terms of the Convention on the Rights of Persons with Disabilities of United Nations (United Nations, 2006 [1]) and the General Comment 4, from the Committee on the Rights of Persons with Disabilities (United Nations 2016a [2]). Inclusive education is defined by the Committee on the Rights of the Child as a set of values, principles and practices that seeks meaningful, effective and quality education for all students, and that does justice to the diversity of learning conditions and requirements not only of children with disabilities, but for all students. This definition is endorsed by the whole United Nation's system.

2. A brief introduction on the hierarchy of norms and the State obligations regarding the right to Education

Education is a fundamental human right enshrined in many international human rights instruments, which may be divided into categories: on one hand, those that have legally-binding force, since they are adopted and ratified by the Member States. In general, it refers to conventions and treaties. In other words, once a State ratifies a treaty, they must abide by it. On the other hand, there are those documents that, although no having legally-binding force, embody a great political and moral authority, as a guideline to the Member States. It usually refers to declarations, recommendations, reports and general comments.

As a fundamental right that belongs to economic, social and cultural rights' category, Member States are obliged to respect, to protect and to fulfil education in progressive realization of this right. It means they must take appropriate measures towards the full realization of the right to education to the maximum of their available resources. Likewise, it means that a State's compliance with its obligation to take appropriate measures is assessed in light of the resources – financial and others – available to it. It is important to highlight that the concept of progressive realization is sometimes misinterpreted as if States did not have to protect economic, social and cultural rights until they have enough resources. On the contrary, States Parties are required to prove that they are adopting all the necessary measures to realise the right as quickly and effectively as possible, within the limits of the resources at their disposal (United Nations, 2008 [3]).

Reasonable accommodations, in contrast, do not depend on progressive realization to be accomplished, as the Committee on the rights of persons with disabilities clarified on General Comment on the right to inclusive education: "the denial of reasonable accommodation



constitutes discrimination and the duty to provide reasonable accommodation is immediately applicable and not subject to progressive realization” (United Nations, 2016a [2]).

3. United Nations

3.1 The Convention on the Rights of the Child

The article 28 of the **Convention on the Rights of the Child** (United Nations, 1989 [7]) was dedicated to the right of education. Despite sharing the values of an inclusive education, the convention does not refer to education as inclusive; neither does the **General Comment 1 on the aims of education** (United Nations, 2001 [8]). Children with disabilities are referred to as a discriminated group in many education systems, whereas the **General Comment 9 on children with disabilities** mentions inclusive education, providing a definition to the expression as “a set of values, principles and practices that seeks meaningful, effective, and quality education for all students, that does justice to the diversity of learning conditions and requirements not only of children with disabilities, but for all students” (United Nations, 2006 [9]). Moreover, the **General discussion on the rights of the children with disabilities** held in 1997 clarified the difference between inclusion and integration in school: “The inclusion of disabled children was a right, not a privilege. There was an important distinction between integration and inclusion. Policies of integration tended to seek to change the child in order to fit into the school. Inclusion, on the other hand, sought to change the school environment in order to meet the needs of the disabled child” (United Nations, 1997 [10]).

3.2 Salamanca Statement and Framework for Action on Special Needs Education

The **Salamanca Statement and Framework for Action on Special Needs Education** (1994) call upon all governments and urge them to “adopt as a matter of law or policy **the principle of inclusive education**, enrolling all children in regular schools, unless there are compelling reasons for doing otherwise”. It also mentions inclusive schools, stating that their fundamental principle is: “that all children should learn together, wherever possible, regardless of any difficulties or differences they may have. Inclusive schools must recognize and respond to the diverse needs of their students, accommodating both different styles and rates of learning and ensuring quality education to all through appropriate curricula, organizational arrangements, teaching strategies, resource use and partnerships with their communities” (United Nations, 1994a [11]).



3.3 General Comments of the Committee on Economic, Social and Cultural Rights regarding the issue

The Committee on Economic, Social and Cultural Rights (CESCR) also pronounced itself about the right to education of persons with disabilities on the **General comment 5: Persons with Disabilities**, assuring that “persons with disabilities can best be educated within the general education system” (United Nations, 1994b [12]). The same committee also adopted the **General Comment No. 13: the right to education**, in which upholds that: “educational institutions and programmes have to be accessible to everyone, without discrimination, within the jurisdiction of the State party” (United Nations, 1999 [13]).

3.4 The Convention on the Rights of Persons with Disabilities

Approved in 2006, the **Convention on the Rights of Persons with Disabilities** (United Nations, 2006a [1]) is the most important law on the issue, being the first human rights treaty on the rights of persons with disabilities in History. In addition, it recognizes the social model of disability as the appropriate paradigm to analyse disability, understanding it as a human rights issue. The CRPD explicitly mentions inclusive education as the adequate way to achieve the right to education, being the first legally binding instrument to contain a reference to the concept of inclusive education.

Throughout the **General Comment 4, on the right to inclusive education**, the Committee on the Rights of Persons with Disabilities sheds light on its meaning, clarifying that it involves strengthening the capacity of the education system to reach out to all learners, regardless of being a person with disability (United Nations, 2016a [2]). It also states that there are many profound challenges preventing inclusive education to be accomplished, such as discrimination on the grounds of disability, lack of political will and of implementation of the social model of disability. Therefore, millions of persons with disabilities continue to be denied the right to education, being excluded from ordinary educational systems.

The document has great importance to foster the right to inclusive education, offering guidelines for the States parties on its implementation. Firstly, the Committee establishes they must consult with and actively involve persons with disabilities, including children with disabilities, in all aspects of planning, implementation, monitoring and evaluation of inclusive education policies. Persons with disabilities and their families must be recognised as partners and not merely recipients of education.

Above all, inclusive education must be understood as a fundamental human right of all learners and not, in the case of children, the right of a parent or caregiver. Parental responsibilities in this regard are subordinate to the rights of the child. It is also a principle that values the well-being



of all students, respects their inherent dignity and autonomy, and acknowledges individual requirements and ability to effectively be included in and contribute to society. Lastly, it is the result of a process of continuing and pro-active commitment to eliminate barriers impeding the right to education, together with changes to culture, policy and practice of regular schools to accommodate and effectively include all students.

To accomplish it, core features must be adopted: whole systems approach; whole educational environment; whole person approach; supported teachers; respect for and value of diversity; learning-friendly environment; effective transitions throughout the different educational stages and to work; recognition of partnerships and monitoring.

The **General Comment No. 6 on equality and non-discrimination**, from the abovementioned committee, is also relevant to the discussion. It stresses that “the failure of some States parties to provide students with disabilities - including students with visible and invisible disabilities and those who experience multiple forms of discrimination or intersectional discrimination - with equal access to mainstream school with inclusive and quality education is discriminatory” (United Nations, 2018 [15]).

3.5 United Nations sustainable development goals

Education is also one of the **UN’s sustainable development goals** (United Nations, 2015a [16]). Specifically, sustainable development goal 4: Ensure inclusive and equitable quality education and promote lifelong learning opportunities for all. The sustainable development goals aim to mobilize efforts in order to fight inequalities with the commitment of several countries from 2015 to 2030, and education is crucial to foster this change. It is intended to accomplish, among others, the target 4.5, to “by 2030, eliminate gender disparities in education and ensure equal access to all levels of education and vocational training for the vulnerable, including **persons with disabilities**, indigenous peoples and children in vulnerable situations”. To help achieve this objective, the Incheon **Declaration for Education 2030** was adopted in 2015, setting out a new vision for education for the next fifteen years (United Nations, 2015b [17]). In line with the sustainable development goals, UNESCO released a **Guide for ensuring inclusion and equity in education**, to support countries in embedding inclusion and equity in educational policy (United Nations, 2017 [18]).

Aware of the importance of measuring the progress of the sustainable development goals through data-based evidence, the United Nations established indicators that make measuring the path of development possible. For target 4.5, there are parity indices (female/male, rural/urban, bottom/top wealth quintile and others such as disability status, indigenous peoples and conflict-affected, as data become available) for all education indicators on this list that can be disaggregated. Nonetheless, the data associated with the target 4.5 is still insufficient, as it may be observed in the chart below:



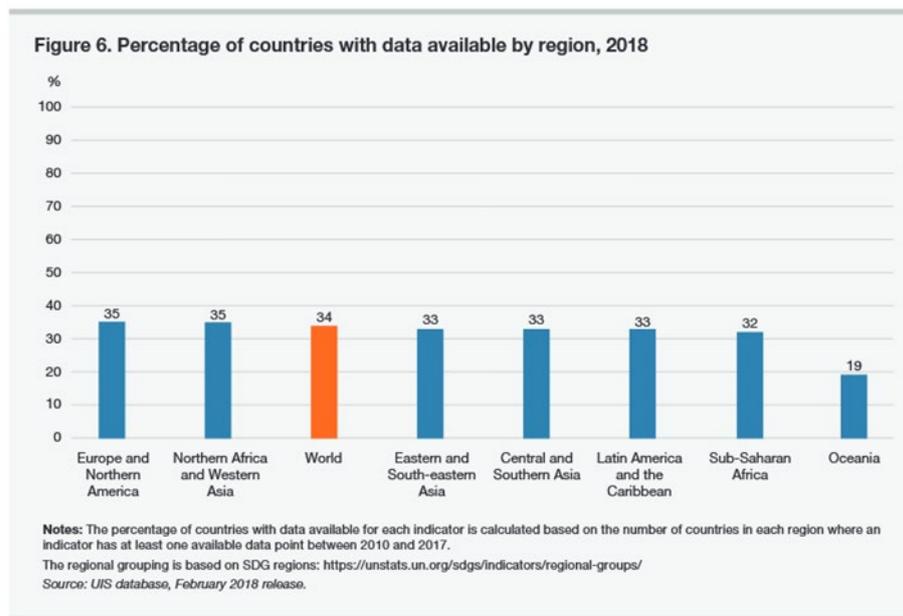


Figure 1: Percentage of countries with data available for the UN’s indicators; (Source : <http://uis.unesco.org/sites/default/files/documents/sdg4-data-book-2018-en.pdf>)

Even though Europe is one of the regions with the highest percentage of data available for the indicators of the target 4.5, not even half of its countries release this information. It also draws attention that there is no available data regarding persons with disabilities or the other groups of the target, aside from gender¹.

3.6 Other relevant documents

In 2013, the Report of the Office of the United Nations High Commissioner for Human Rights was dedicated to the right of persons with disabilities to education, in which “inclusive education has been acknowledged as the most appropriate modality for States to guarantee universality and non-discrimination in the right to education”. It also mentions the “no-rejection clause”, according to which no student can be rejected from general education on the basis of disability. The referred clause has immediate effect and is reinforced by reasonable accommodation.

Finally, the General Assembly submitted a report of the United Nations High Commissioner for Human Rights on Empowering children with disabilities for the enjoyment of their human rights, including through inclusive education (United Nations, 2019 [19]). Other documents regarding the right to education in United Nation’s framework are worth mentioning: World declaration on education for all and framework for action to meet basic learning needs (United Nations, 1990 [20]), Standard Rules on the Equalization of Opportunities for Persons with Disabilities

¹ According to the information available at: <https://sdg-tracker.org/quality-education#targets>, on 14/03/2019.



(United Nations, 1993 [21]), Plan of Action for the United Nations Decade for Human Rights Education (United Nations, 1995 [22]), the Report of the Special Rapporteur on the right to education of persons with disabilities (United Nations, 2007 [23]) and the Report on Equality and non-discrimination under article 5 of the Convention on the Rights of Persons with Disabilities (United Nations, 2016b [24]).

Moreover, the Quality of Life model, analysed throughout the Chapter III, is a crucial indicator to verify the results of inclusive education for each student, as well as a guide to establish the criteria to evaluate the students' progress (Verdugo, 2009).

Altogether, these documents allow us to understand how the right to inclusive education has developed in the United Nations' system and its importance to the inclusion of persons with disabilities in society, not only as a right itself, but also a means for attaining other rights.

4. European Union (EU)

4.1 The European Union legal order: instruments of Union law

The EU is a community based on law: it is a creation of law and pursues its objectives by means of law. Hence, every action taken by the EU is founded on treaties that have been approved by all its Member States. The Treaties set out the EU's objectives, rules for EU institutions, how decisions are made and the relationship between the EU and its Member States.

One of its main treaties related to human rights is the **Charter of Fundamental Rights of the European Union** (European Union, 2000 [25]), which refers to, among other issues, persons with disabilities, non-discrimination, human dignity and education. The provisions of the Charter are addressed to the institutions, bodies, offices and agencies of the Union with due regard for the principle of subsidiarity. This principle seeks to safeguard the ability of the Member States to take decisions and action and authorises intervention by the Union when the objectives of an action cannot be sufficiently achieved by the Member States, but can be better achieved at Union level (European Union [26]).

This principle applies to the right to education, because EU countries are responsible for their own education and training systems, but the European Union helps them set joint goals and share good practices on the issue, playing a supporting role. According to Art. 165 of the **Treaty on the Functioning of the European Union** (TFEU), the Community "shall contribute to the development of quality education by encouraging cooperation between Member States, through actions such as promoting the mobility of citizens, designing joint study programmes, establishing networks, exchanging information or teaching languages of the European Union." (European Union, 2007 [27]).



In 2017, the Council of the European Union adopted the **Conclusions on Inclusion in Diversity to achieve a High Quality Education For All**, in which it underlines that “ensuring inclusive high quality education should be seen in a life-long perspective covering all aspects of education. It should be available and accessible to all learners of all ages, including those facing challenges, such as those with special needs or **who have a disability**, those originating from disadvantaged socio-economic backgrounds, migrant backgrounds or geographically depressed areas or war-torn zones, regardless of sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation” (European Union, 2017b [28]).

The same year, the Commission also presented its new strategy to support high quality, inclusive and future-oriented school and higher education. The initiatives outlined the EU’s support to help Member States and education providers take the steps needed to improve opportunities for all young people in Europe, helping to build fair and resilient societies. The Commission identifies areas where action is urgently needed and how EU support can help its countries address the current challenges, especially in three priority areas: raising the quality and inclusiveness of schools; supporting excellent teachers and school leaders and improving the governance of school education systems. Furthermore, among the main goals of the renewed EU agenda for higher education, it is building inclusive higher education systems.

Despite the efforts to boost inclusive education, the EU still has challenges to overcome, as EASPD pointed out: “the EU could do more to fulfil the right to inclusive education and should lead by example as recommended by the United Nations Committee on the Rights of Persons with Disabilities to the EU, starting with the European Schools. A first step is to more actively promote trainings and programmes which would help staff to succeed in achieving inclusive education and to encourage Member States to focus on transition from segregated education systems to mainstream schools” (EASPD, 2015 [29]).

The aforementioned documents are not the only ones regarding inclusive education in European Union framework. Other relevant documents are: a thematic publication on the **Special Needs Education in Europe** (European Union, 2003 [30]); **Supporting the Teaching Professions for Better Learning Outcomes** (European Union, 2012 [31]); **Paris Declaration on promoting citizenship and the common values of freedom, tolerance and non-discrimination through education** (European Union, 2015 [32]); a communication from the Commission to the European Parliament, the Council, the European economic and social committee and the committee of the regions on **Strengthening European Identity through Education and Culture** (European Union, 2017d [33]); a position paper from the Council of Europe on **Fighting school segregation in Europe through inclusive education** (European Union, 2017 [34]); **Council recommendation on key competences for lifelong learning** (European Union, 2018a [35]) and **Council Recommendation on promoting common values, inclusive education, and the European dimension of teaching** (European Union, 2018b [36]).



4.2 European Union and the Convention on the Rights of Persons with Disabilities

The Convention on the Rights of Persons with Disabilities was the first human rights treaty ratified by a regional organization, the European Union. Likewise, all of its State members have also ratified it. EU, however, has not ratified the Optional Protocol of the Convention. Consequently, it does not recognize the competence of the Committee to receive and consider communications from or on behalf of individuals subject to its jurisdiction who claim to be victims of a violation by that State Party.

The EU relies on the **European Disability Strategy 2010-2020** as the most important instrument to support the EU's implementation of the CRPD.

All States parties to the CRPD are obliged to submit regular reports to the Committee on how the rights are being implemented. The Committee examines each report and shall make such suggestions and general recommendations on the report as it may consider appropriate and shall forward these to the State Party concerned. The Committee made the first recommendations to EU in 2015.

Regarding education, the Committee stated that: “The Committee is concerned that in different European Union member States, many boys and girls, and adults with disabilities cannot access inclusive, quality education in line with the Convention. The Committee recommends that the European Union evaluate the current situation and take measures to facilitate access to and enjoyment of inclusive, quality education for all students with disabilities in line with the Convention and include disability-specific indicators in the Europe 2020 strategy when pursuing the education target.”

When analysing the European Disability Strategy 2010-2020, the Committee expressed its concern, since the mid-term assessment of the European Disability Strategy 2010-2020, which was due in 2015, had not yet been carried out and there were no clear benchmarks and guidelines on how the recommendations in the present concluding observations will be incorporated into the implementation of the strategy during the second half (2016-2020) of its term.

5. Conclusions

- The Convention on the Rights of Persons with Disabilities is the greatest reference in terms of inclusive education in the international framework and the following documents adopted by its Committee guarantee the guidelines on the issue are always updated and in line with the needs of persons with disabilities.



- Inclusive education goes far beyond reuniting children with and without disabilities at the same classroom, ensuring a diverse environment where the needs of the children with disabilities are met. It also must guarantee quality education to all children.
- The ratification of the Optional Protocol by a State party enables its citizens to submit communications regarding the violation of the right to inclusive education. To this date, however, no communication on the issue has been analysed by the Committee on the rights of persons with disabilities or the Committee on the rights of the child;
- The fact that the European Union has not ratified the Optional Protocol undermines the competences of the Committee on the rights of persons with disabilities in its territory and concerns the United Nations.

6. Summary

The chapter describes the international legal framework regarding the right to inclusive education, both in the United Nations and the European Union. It is possible to observe how the protection of this right has evolved throughout the years and how the idea of inclusive education as the best way to fulfil this right has emerged. As the international legal documents guarantee, inclusive education goes far beyond reuniting children with and without disabilities at the same classroom, ensuring a diverse environment where the needs of the children with disabilities are met.



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