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# Transition to Inclusive Education Systems According to the Convention on the Rights of Persons with Disabilities \*

Gauthier de Beco  
Lecturer in Disability Law; University of Leeds

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## Abstract:

This article deals with the transition to inclusive education systems, and therefore concerns states that have built segregated education systems. Article 24 of the Convention on the Rights of Persons with Disabilities (CRPD) proclaims the right to inclusive education for disabled people. State parties that are equipped with special schools, however, face particular challenges in progressively realising the right in question. This article therefore examines *what 'inclusive education' truly means*, what steps must be taken to achieve it, and what tools can be used to ensure the transition to inclusive education systems so as to comply with the CRPD. Considering the obstacles to inclusive education, the article argues that inclusive education is a process that needs permanent efforts to adapt the general education system to disabled children. It also considers the implementation of the right to education of disabled people through the adoption of national human rights action plans and the use of human rights indicators.

## Key words:

Inclusive Education – CRPD – Disabled Children – Segregated Education – Transition – Progressive Realisation – Challenges

## I. Introduction

As with anyone else, the right to education is of the utmost importance for disabled people. Education works as a multiplier, since it enhances both economic, social and cultural rights, such as the right to work and the right to food, in addition to civil and political rights, such as the right to vote and the freedom of speech. The right to education also has a added impact on disabled people, as it enhances their autonomy and strengthens their participation in society. It can alleviate their marginalised position and empower them to take control of their life. In view of this, the right to education is probably the most effective means of achieving equal opportunities for disabled people.

This article focuses on the transition to inclusive education systems. It therefore concerns states that have built segregated education systems. Article 24 of the Convention on the Rights of Persons with Disabilities<sup>1</sup> (CRPD) proclaims the right to inclusive education for

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\* At the very last stage of the review process of the present article, the CRPD Committee issued Draft General Comment No. 4 on the Right to Inclusive Education (Draft General Comment). See: [http://www.ohchr.org/Documents/HRBodies/CRPD/GC/DraftGC\\_Education.doc](http://www.ohchr.org/Documents/HRBodies/CRPD/GC/DraftGC_Education.doc) (accessed 2 February 2016). While it was not possible to discuss this draft in depth, a few suggestions on its content are made in the footnotes, where relevant.

<sup>1</sup> Convention on the Rights of Persons with Disabilities 2006, 46 ILM 443.

disabled people. In wealthier states, however, disabled children often receive special education, since the general education system is not adapted to their individual needs. These states face particular challenges in progressively realising the right to inclusive education. What these states require therefore is to transform their education systems. This article outlines the state obligations for the right to education of disabled people and attempts to provide a definition for the concept of ‘inclusive education’ in the CRPD. It examines the main challenges to progressively realise the right to inclusive education and considers whether any obstacles to inclusive education can be removed in practice. It also explores what tools can be used to ensure the transition to inclusive education systems so as to comply with the CRPD. It suggests that a gradual approach is required to achieve inclusive education, by adopting national human rights action plans and using human rights indicators, while relying on the recommendations of the Committee on the Rights of Persons with Disabilities (CRPD Committee) and other UN bodies.

The article is divided into three parts. The first part analyses the various elements of the right to education of disabled people under the CRPD. It then moves to discuss the challenges in progressively realising the right to inclusive education as well as limits to adapting the general education system to disabled children. Thirdly, the article examines how both ensuring the transition to inclusive education systems and how national human rights action plans and human rights indicators can help towards the purpose.

## II. Standards Relating to the Right to Education of Disabled People

Several international legal instruments protect the right to education. In addition to article 26 of the Universal Declaration of Human Rights, both articles 13 and 14 of the International Covenant on Economic, Social and Cultural Rights<sup>2</sup> (ICESCR) and articles 28 and 29 of the Convention on the Rights of the Child<sup>3</sup> (CRC) recognise ‘the right of everyone to education’ and provide obligations relating to primary, secondary and tertiary education. The UNESCO Convention against Discrimination<sup>4</sup> also prohibits discrimination in education based on various grounds (but not disability).

Article 24 of CRPD protects the right to education of disabled people. Concerned with the exclusion of many disabled children from the general education system, the drafters of the Convention opted for the principle of inclusive education. While the idea was expressed previously in the 1993 Standard Rules on the Equalization of Opportunities for Persons with Disabilities (Standard Rules)<sup>5</sup> and the Salamanca Statement and Framework for Action on Special Needs Education (Salamanca Statement),<sup>6</sup> the CRPD is the first binding international legal instrument to establish a right to inclusive education for disabled people.<sup>7</sup> Inspired by

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<sup>2</sup> International Covenant on Economic, Social and Cultural Rights 1966, 993 UNTS 3.

<sup>3</sup> Convention on the Rights of the Child 1989, 1577 UNTS 3.

<sup>4</sup> Convention against Discrimination in Education 1960, 429 UNTS 93

<sup>5</sup> Article 3(5), Jomtien Declaration; Rule 6 (1), Standard Rules.

<sup>6</sup> World Conference on Special Needs Education: Access and Equality, Salamanca Statement and Framework for Action on Special Needs Education, Salamanca, 7-10 June 1994, available at: <http://unesdoc.unesco.org/images/0009/000984/098427eo.pdf> (accessed 2 February 2016).

<sup>7</sup> 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 NQHR 263, 272-74.

the social model of disability,<sup>8</sup> the Convention sees disabled people as ‘those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others’.<sup>9</sup> The Convention adopts a ‘social and relational approach’ to disability,<sup>10</sup> which distances itself from the medical model of disability.<sup>11</sup> It aims to abolish the different mechanisms that exclude these persons by removing the physical and social obstacles to their participation in society. Accordingly, article 24 of the CRPD guarantees that these persons are fully included in the general education system. It even provides in the most straightforward way for inclusion in the entire Convention.

The drafters of the CRPD did not immediately agree on the right to inclusive education. There was a lot of discussion on whether special education still had to be made available to disabled people. The Ad Hoc Committee initially left to them the right to choose between inclusive and special education.<sup>12</sup> While some of the drafters considered that special schools should still exist, others thought that inclusive education should be the norm.<sup>13</sup> In this regard, the Standard Rules recognised that ‘[i]n situations where the general school system does not yet adequately meet the needs of all disabled people, special education may be considered’, although it ‘should be aimed at preparing students for education in the general school system’.<sup>14</sup> The Committee on the Rights of the Child also considered that ‘the measure in which the inclusion occurs, may vary’.<sup>15</sup> There were thus doubts about whether inclusive education was the preferable option in all circumstances for disabled children. The CRPD’s drafters eventually decided in favour of inclusive education.<sup>16</sup>

Thus, article 24(1) of the CRPD stipulates that ‘States Parties shall ensure an inclusive education system at all levels and lifelong learning’, thereby providing a legal basis for the principle of inclusive education in international law. Article 24(2) (a) and (b) of the CRPD also provides that the state parties shall ensure that ‘children with disabilities are not excluded from free and compulsory primary education on the basis of disability’ and that ‘persons with disabilities can access an inclusive, quality and free primary education and secondary education on an equal basis with others in the communities in which they live’. Consequently, disabled children may not be denied education because of their disability and must be able to enrol in neighbouring schools.

Article 24 of the CRPD also outlines the obligations to be fulfilled for the right to education of disabled people. Article 24(2)(c) provides that state parties shall ensure that ‘[r]easonable

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<sup>8</sup> R Kayess and P French, ‘Out of the Darkness into Light? Introducing the Convention on the Rights of Persons with Disabilities’ (2008) 8 HRLR 1, 5-7.

<sup>9</sup> Article 1, CRPD.

<sup>10</sup> M Sabatello, ‘A Short History of the Movement’ in M Sabatello and M Schulze (eds), *Human Rights & Disability Advocacy* (University of Pennsylvania Press, 2013) 13, 22.

<sup>11</sup> A Kanter, ‘The Relationship between Disability Studies and the Law’ in A Kanter and B Ferri (eds), *Righting Education Wrongs* (Syracuse University Press, 2013) 1, 12-13.

<sup>12</sup> Draft article 17(3) of the CRPD provided that ‘where the general education system does not adequately meet the needs of persons with disabilities special and alternative forms of learning should be made available’ (Report of the Working Group to the Ad Hoc Committee (2004) UN Doc A/AC.265/2004/WG/1, Annex 1, available at: <http://www.un.org/esa/socdev/enable/rights/ahcwgreportax1.htm> (accessed 2 February 2016)).

<sup>13</sup> B Byrne, ‘Hidden Contradictions and Conditionality: Conceptualisations of Inclusive Education in International Human Rights Law’ (2013) *Disability & Society* 232, 239.

<sup>14</sup> Rule 6 (8), Standard Rules.

<sup>15</sup> Committee on the Rights of the Child, ‘General Comment No. 9: The rights of children with disabilities’, 27 February 2007, CRC/C/GC/9, para. 66.

<sup>16</sup> de Beco (n 7) 273-74.

accommodation of the individual's requirements is provided'. While this obligation is already provided for in article 5(3) of the Convention, it is thus repeated in relation to education. 'Reasonable accommodation' refers to an individualised measure that enables disabled children to be educated in mainstream schools. However, such a measure targets the children but not the schools themselves. Reasonable accommodation does not aim to achieve inclusive education by altering the general education systems. That being said, article 2 of the CRPD stipulates that 'denial of reasonable accommodation' is a form of discrimination.<sup>17</sup>

In addition, the CRPD obliges state parties to adopt a series of measures so that disabled children can participate in the general education system. These measures aim to supplement the 'reasonable accommodation', although they should also be tailored to their individual needs. Article 24(2)(d) and (e) of the Convention requires that '[p]ersons with disabilities receive the support required, within the general education system, to facilitate their effective education' and that '[e]ffective individualised support measures are provided in environments that maximize academic and social development, consistent with the goal of full inclusion'.<sup>18</sup> While both provisions seem to stipulate the same, their drafting history indicates that they have different purposes. Originally, they were part of the same paragraph, but the second sentence stated that '[i]n exceptional circumstances where the general education system cannot adequately meet the support needs of persons with disabilities .... [a]lternative support measures' have to be provided. The terms 'environments that maximize academic and social development' also found their way into article 24(3)(c) of the CRPD which creates a special regime for blind, deaf, or deafblind children.<sup>19</sup> In view of this, article 24(e) could be seen as an obligation to equip schools with specific support measures facilitating the transition to inclusive education systems. While the drafters of the Convention initially thought of making an exception to the support measures that have to be generally available according to article 24(2)(d), such measures may deviate slightly if the general education system cannot meet their individual needs in this way.<sup>20</sup> They may therefore be 'individualised' further and be less integrated into the overall support. The result may nonetheless not amount to segregated education, as confirmed by the terms 'consistent with the goal of full inclusion' of article 24(2)(e) of the CRPD.

Furthermore, to achieve inclusive education, state parties have to adopt measures concerning other school actors too. Article 24(4) of the CRPD requires that teachers be trained in 'the use

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<sup>17</sup> Article 2 of the CRPD defines the concept of 'reasonable accommodation' as 'necessary and appropriate modifications and adjustments not imposing a disproportionate or undue burden, where needed in a particular case, to ensure to persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms'.

<sup>18</sup> O Arnardóttir, 'The Right to Inclusive Education For Children With Disabilities – Innovations In the CRPD' in A Eide, J Möller and I Ziemele (eds), *Making Peoples Heard Essays on Human Rights in Honour of Gudmundur Alfredsson* (Martinus Nijhoff Publishers, 2011) 197, 216-17. For the subsequent versions see: Ad Hoc Committee, 'Sixth Session, Ad Hoc Committee on a Comprehensive and Integral International Convention on the Protection and Promotion of the Rights and Dignity of Persons with Disabilities', 17 August 2005, A/60/266, Annex II, para. 36, available at : <http://www.un.org/esa/socdev/enable/rights/ahc6docs/ahc6reporte.pdf> (accessed 2 February 2016); Ad Hoc Committee, 'Seventh Session, Ad Hoc Committee on a Comprehensive and Integral International Convention on the Protection and Promotion of the Rights and Dignity of Persons with Disabilities', 13 February 2006, A/AC.265/2006/2, Annex II, available at: <http://www.un.org/esa/socdev/enable/rights/ahc7docs/ahc7report-e.pdf> (accessed 2 February 2016).

<sup>19</sup> Arnardóttir (n 18) 219-20.

<sup>20</sup> It could therefore give leeway for adopting targeted support measures for those children with disabilities whose individual needs cannot be met generally 'in exceptional circumstances' (as provided in the original version of article 24 (2)(e)).

of appropriate augmentative and alternative modes, means and formats of communication, educational techniques and materials to support persons with disabilities'. Training on issues related to disability must therefore be incorporated into teacher education programmes. Article 8(2)(b) of the CRPD also provides that state parties endeavour to foster 'at all levels of the education system, including in all children from an early age, an attitude of respect for the rights of persons with disabilities'. States parties must therefore raise awareness of the Convention and promote a positive image of disabled children both in educational materials and school environments.

Having considered the steps to be taken to achieve inclusive education, it is necessary to note that the right to inclusive education is subject to progressive realisation. Article 2(1) of the ICESCR provides that a state must 'take steps [...] to the maximum of its available resources [...] with a view to achieving progressively the full realisation of the rights recognised in the [...] Covenant' within its maximum available resources. As stated by the Committee on Economic, Social and Cultural Rights, progressive realisation recognises that the 'full realisation of all economic, social and cultural rights will generally not be able to be achieved in a short period of time'.<sup>21</sup> States may therefore, to a certain extent, delay in fulfilling some of their obligations resulting from economic, social and cultural rights. They must, however, 'move as expeditiously and effectively as possible towards' their full realisation.<sup>22</sup> They must also devote a sufficient proportion of their resources to reach the goal and give priority to the issues related to economic, social and cultural rights. Similarly, the right to inclusive education has to be realised progressively within a state's maximum available resources.<sup>23</sup> Article 4(2) of the CRPD provides for the same clause as article 2(1) of the ICESCR.<sup>24</sup>

However, states also have immediate obligations for the right to education of disabled people. They must at all times fulfil 'a minimum core obligation to ensure the satisfaction of, at the very least, minimum essential levels of each of the rights' protected by the ICESCR, including 'the most basic forms of education'.<sup>25</sup> The latter should include not only primary education but also other levels of education, given their importance for the life opportunities of disabled people.<sup>26</sup> The prohibition of discrimination, likewise, is an obligation of immediate application.<sup>27</sup> This includes the duty to provide 'reasonable accommodation' in education.<sup>28</sup> Schools are therefore obliged to take individualised measures in order to welcome disabled children. When accommodation can be considered 'reasonable' is a

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<sup>21</sup> Committee on Economic, Social and Cultural Rights, 'General Comment No. 3, The Nature of State Parties' Obligations (Art. 2, par. 1)', 14 December 1990, E/1991/23, para. 9.

<sup>22</sup> Ibid.

<sup>23</sup> It is worth noting that article 24(2) of the CRPD does not differentiate between primary and secondary education and that article 24(1) stipulates that education systems must be inclusive 'at all levels and life long learning'. By contrast, article 13(2) of the ICESCR provides that primary education shall be 'compulsory and available free to all', whereas secondary and higher education shall be made accessible 'in particular by the progressive introduction of free education'.

<sup>24</sup> Article 4(2) provides that a state 'undertakes to take measures to the maximum of its available resources ... with a view to achieving progressively the full realization of [economic, social and cultural rights]'.

<sup>25</sup> Ibid, para. 10.

<sup>26</sup> The CRPD Committee considers that 'the most basic forms of education' include 'compulsory, free primary education' (Draft General Comment, para. 40). As argued above, it had better extend this to all education levels. Disabled people must not be denied access to any forms of education that can contribute to their participation in society and alleviate their marginalisation both in the short and long term.

<sup>27</sup> 'Maastricht Guidelines on Violations of Economic, Social and Cultural Rights' (1998) 20 HRQ 691, para. 11.

<sup>28</sup> Article 24(2)(c), CRPD. This duty applies to all education levels, especially since article 24(5) of the CRPD stipulates that disabled people must be 'able to access general tertiary education, vocational training, adult education and lifelong learning without discrimination'.



delicate question though, which will never have a definite answer and must be examined on a case-by-case basis.<sup>29</sup> To avail themselves with the necessary information, schools must identify all the measures that could be taken as well as their possible impact in consultation with disabled children and their families. This involves a cost-benefit comparison, with costs calculated on the basis of the compensations available and the benefits calculated by taking into account the advantages for parties other than those for whom these measures are taken.<sup>30</sup> If a ramp is useful for disabled children, for instance, it will likewise be beneficial to pregnant mothers, small children and older people. Even though the reasonable character of an accommodation for the purpose of inclusive education can be difficult to determine, several sources point out that their cost is often over-estimated and that most of the time they are available.<sup>31</sup> While the duty to provide 'reasonable accommodation' is an immediate obligation, because failure to do so is discrimination, inclusive education may therefore be achieved over a certain period of time depending on the maximum available resources.

While article 24 of the CRPD proclaims the right to inclusive education for disabled people, states may choose how they will achieve this goal. Although human rights standards are universal, their application must be context-specific, with the result that there is no single way of fulfilling them. The reason is that states are the best placed to protect human rights.<sup>32</sup> Not only have they a better understanding of their own human rights situation but also of the ways in which that situation can be improved. As a result, there is room, to a certain degree, for local variations, especially with regard to economic, social and cultural rights which can be realised through different institutional arrangements.<sup>33</sup> This means that states may define their priorities depending on the extent to which they have realised all these rights and their choices' possible multiplier effects.

Before moving on, however, it is worth making clear what the goal in question may be. Contrary to other concepts such as 'reasonable accommodation', 'inclusive education' is not defined by the CRPD.<sup>34</sup> There are some indications about what it is not. Inclusive education is without a doubt not equal to education in special schools for children with specific kinds of impairment, because that results in the segregation of disabled children. Nor is it equal to integration, which simply provides access to mainstream schools for disabled children without addressing their individual needs.<sup>35</sup> Education systems that are not adapted to the varied needs of disabled children and that do not guarantee true participation in classes and interaction

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<sup>29</sup> N Bamforth, M Malik and C O'Conneide, *Discrimination Law: Theory and Context* (Sweet and Maxwell 2008) 1077-78.

<sup>30</sup> L de Campos Velho Martel, 'Reasonable Accommodation: The New Concept from an Inclusive Constitutional Perspective' (2011) 8 IJHR 85, 103-4.

<sup>31</sup> OHCHR, From Exclusion to Equality. Realizing the rights of persons with disabilities. Handbook for Parliamentarians on the Convention on the Rights of Persons with Disabilities and its Optional Protocol (UN, 2007) 84-85, available at: <http://www.ohchr.org/Documents/Publications/training14en.pdf> (accessed 2 February 2016); UNICEF Innocenti Research Centre, Promoting the Rights of Children with Disabilities (UNICEF, 2007) 1, available at: [http://www.un.org/esa/socdev/unyin/documents/children\\_disability\\_rights.pdf](http://www.un.org/esa/socdev/unyin/documents/children_disability_rights.pdf) (accessed 2 February 2016).

<sup>32</sup> D Shelton, 'Subsidiarity and Human Rights Law' (2006) 27 HRLJ 4-11.

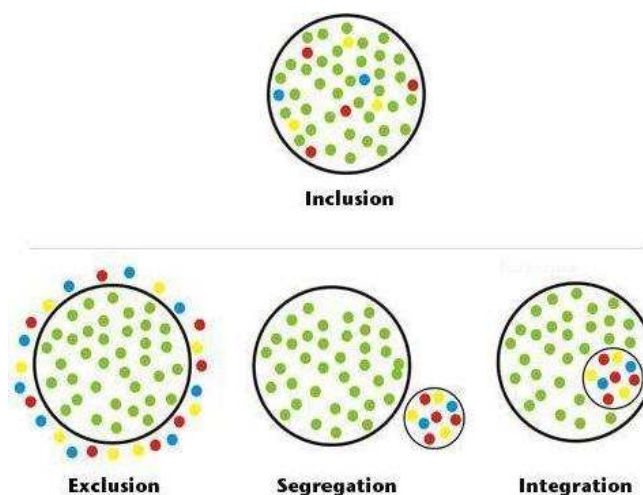
<sup>33</sup> M Dowell-Jones, *Contextualising the International Covenant on Economic, Social and Cultural Rights: Assessing the Economic Deficit* (Martinus Nijhoff Publishers, 2004) 44-51.

<sup>34</sup> See n 17.

<sup>35</sup> G Thomas, 'Inclusive Schools for an Inclusive Society' (1997) 24 BJSE 103-7, 103: Committee on the Rights of the Child (n 15) para. 67. The CRPD Committee also indicates that 'placing students with disabilities within mainstream classes without appropriate support does not constitute inclusion' (Draft General Comment, para. 11). This issue could be developed, especially since there has been confusion between 'inclusion' and 'integration' and the former has often mistakenly been used to refer to the latter.

between disabled and non-disabled children cannot be considered inclusive. What ‘inclusive education’ refers to in article 24 of the CRPD, however, is not easy to establish. There is a lack of consensus in this area and little jurisprudence to know how exactly it should be understood. Given the novelty of the concept of inclusive education and given the absence of research about the meaning of inclusiveness in international law, the task is delicate and hazardous. The risk lies especially in setting the threshold: if it is too high, it is impossible to reach, and if it is too low it hindering efforts.

The following diagram contrasts inclusive education with other related concepts.<sup>36</sup>



The question is still what could be the true meaning of ‘inclusive education’.<sup>37</sup> The concept of inclusive education has emerged from its opposite, namely special education.<sup>38</sup> From this view point, inclusive education means having as many disabled children as possible in mainstream schools. In other words, all schools should welcome these children, whatever the practical implications. This, however, is a wrong and simplistic approach. Inflating numbers can even achieve the contrary effect if unaccompanied by inclusion in wider school life.<sup>39</sup> This has sometimes been done by establishing separate classes for disabled children, which are ambiguously named ‘inclusion centres’,<sup>40</sup> so as to avoid their exclusion from mainstream schools. As a result, they might continue to suffer marginalisation in these schools.<sup>41</sup> Inclusive

<sup>36</sup> In this diagram, ‘exclusion’ means that disabled people are separated from others, ‘segregation’ that they are separated from others but regrouped together, ‘integration’ that they are mixing with other people but regrouped together, and ‘inclusion’ that they are mixing with other people and dispersed among these people. Inclusion, however, could go a step further by no longer distinguishing disabled people and non-disabled people and therefore represent everyone in the same colour (which is thus green).

<sup>37</sup> The CRPD Committee also provides that the right to inclusive education is ‘a process that transforms culture, policy and practice in all educational environments to accommodate the differing needs of individual students, together with a commitment to remove the barriers that impede that possibility’ (Draft General Comment, para. 9). While this definition is well thought of, it could be elaborated as regards both the focus on the general education system and the permanent efforts in order to reach the goal. See below in this section and in the next one.

<sup>38</sup> G Thomas, ‘A Review of Thinking and Research about Inclusive Education Policy, with Suggestions for a New Kind of Inclusive Thinking’ (2013) 39 BJSE 473-90, 475.

<sup>39</sup> D Connor and B Ferri, ‘The Conflict Within: Resistance to Inclusion and Other Paradoxes in Special Education’ (2007) 22 Disability & Society 63-77, 72.

<sup>40</sup> B Norwich, Addressing Tensions and Dilemmas in Inclusive Education. Living with Uncertainty (London, 2013) 109.

<sup>41</sup> R Slee, The Irregular School: Exclusion, Schooling and Inclusive Education (Routledge, 2011) 80.



education is not about ‘placing’ disabled children in mainstream schools; rather, it concerns education systems themselves. It requires a far-reaching adaptation of the general education system. Such adaptation must aim to apply a ‘universal design’ to education - a concept that originally developed in architecture - by ensuring that from the very beginning, goods, services, equipment, and facilities can be used by everybody.<sup>42</sup> This involves not only looking at the way in which schools address the individual needs of children who are considered disabled but also designing education systems so as make room for the variety of children from inception.<sup>43</sup> In order to make schools inclusive, therefore, what is needed is a profound ‘change of culture’, which can only come through a shift in how education is viewed by society. The road towards that kind of change, however, is long and rocky. The aims of education have to be revisited, as well as the way of teaching children.

Therefore, the right approach lies not so much in describing the ultimate objective as in finding the road towards that objective. Since the concept of inclusive education refers more to a particular kind of conduct, what matters is the way in which inclusive education must be achieved. Attention should primarily go not to the goal itself, especially since this goal is one that will never be reached completely. Tailoring education to cater for all children may create new challenges in realising the right to inclusive education. While inclusive education is an objective that must certainly be strived for, additional barriers may appear that prevent other children from participating in the general education system. This means that there will never be a state of ‘perfect’ inclusion in education. The purpose, therefore, should not be to identify the ‘problems’ of disabled children to help them fill the ‘gap’ but to determine how all children’s abilities and skills can be effectively strengthened through education.<sup>44</sup> Schools have to acquire the capacity of embracing human difference in its various aspects instead of focusing on a particular type of learners. As a result, inclusive education is rather a kind of process through which the individual needs of all children are recognised, understood, and addressed.<sup>45</sup> Given that the final objective is unattainable, this process should be reviewed perpetually so that future obstacles can be overcome.

There is widespread agreement on the way in which inclusive education can be brought about. According to the Organisation for Economic Co-operation and Development (OCDE), it concerns ‘alterations on educationalists’ perceptions of children’s being, some re-thinking of the purposes of education and a reforming of the system generally, all of which needs consideration in the development of “schools for tomorrow”’.<sup>46</sup> The Salamanca Statement provides that inclusive education happens through ‘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’.<sup>47</sup>

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<sup>42</sup> Article 4(f), CRPD.

<sup>43</sup> M Minow, ‘Universal Design in Education. Remaking All the Difference’ in Kanter and Ferri (n 11) 38-57, 56.

<sup>44</sup> S Ebersold, ‘Accessibilité, politiques inclusives et droit à l’éducation: considérations conceptuelles et méthodologiques’ (2015) 9 ALTER 22-33, 27; M Moore and R Slee, ‘Disability Studies, Education and Exclusion’ in N Watson, A Roulstone and C Thomas (eds), Routledge Handbook of Disability Studies (Routledge, 2012) 225, 235.

<sup>45</sup> D Goodley, *Disability Studies. An Interdisciplinary Introduction* (SAGE, 2011) 141.

<sup>46</sup> OECD, *Inclusive Education at Work: Students with Disabilities in Mainstream Schools* (OECD, 1999) 22, available at: [http://www.oecd-ilibrary.org/education/inclusive-education-at-work\\_9789264180383-en](http://www.oecd-ilibrary.org/education/inclusive-education-at-work_9789264180383-en) (accessed 2 February 2016).

<sup>47</sup> World Conference on Special Needs Education: Access and Equality (n 6) para. 7.

It is also possible to identify the key elements of inclusive education as they stem from the CRPD. The latter does not simply hold that disabled children should be educated in mainstream schools but that education systems must be ‘inclusive’ for disabled people. The objective should therefore be to adapt the general education system, including the school curriculum, education methods and target assessments.<sup>48</sup> The Convention also includes accessibility in its general principles, and focuses on support measures and teacher training with a view to achieving inclusive education.<sup>49</sup> Thus, inclusive education requires that school environments are made accessible,<sup>50</sup> disabled children provided with adequate support,<sup>51</sup> and teachers trained in dealing with disabilities.<sup>52</sup> These elements, as well as their significance for general education systems, may be a stepping stone towards further constructing a definition for the concept of ‘inclusive education’ according to Article 24 of the CRPD.

### III. Challenges in Progressively Realising the Right to Inclusive Education

In reality, inclusive education is far from being globally achieved. Although the CRPD established the right to inclusive education, disabled children generally do not participate in the general education system. In many of parts of the world, these children simply cannot go to school.<sup>53</sup> States are therefore responsible for their full participation in the general education system. In wealthier countries, disabled children are often enrolled in special schools.<sup>54</sup> This includes western Europe, where strongly segregated education systems have been built since the 1970s. The special schools often provide a lower standard of education and decrease their pupils’ future chances of life. This was originally done in order to better address their individual needs but also due to teachers’ inability to deal with issues related to disability. As a result, states like Belgium, Germany, and the Netherlands have a hard time in reducing the number of disabled children in special schools.<sup>55</sup> Given their historically segregated structures, these states face particular challenges in progressively realising the right to inclusive education.<sup>56</sup>

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<sup>48</sup> Slee (n 41) 40.

<sup>49</sup> Articles 3(f), 9 and 24(2) and (4), CDPR.

<sup>50</sup> V Munoz, The right to education of persons with disabilities. Report of the Special Rapporteur on the Right to Education, 19 February 2007, A/HRC/4/29, 8.

<sup>51</sup> Inclusion International, Better Education for all when we are included too. A Global Report. People with an Intellectual Disability and their Families Speak out on Education for All, Disability and Inclusive Education, October 2009, 65-66, available at: [http://ii.gmalik.com/pdfs/Better\\_Education\\_for\\_All\\_Global\\_Report\\_October\\_2009.pdf](http://ii.gmalik.com/pdfs/Better_Education_for_All_Global_Report_October_2009.pdf) (accessed 2 February 2016).

<sup>52</sup> Global Campaign for Education and Handicap International, Equal Right, Equal Opportunity. Inclusive Education For Children with Disabilities, 23-24, available at: [http://campaignforeducation.org/docs/reports/Equal%20Right,%20Equal%20Opportunity\\_WEB.pdf](http://campaignforeducation.org/docs/reports/Equal%20Right,%20Equal%20Opportunity_WEB.pdf) (accessed 2 February 2016).

<sup>53</sup> UNICEF, *The State of the World’s Children 2013*. Children with disabilities (UNICEF, 2013) 27-28, available at: [http://www.unicef.org/sowc2013/files/SWCR2013\\_ENG\\_Lo\\_res\\_24\\_Apr\\_2013.pdf](http://www.unicef.org/sowc2013/files/SWCR2013_ENG_Lo_res_24_Apr_2013.pdf) (accessed 2 February 2016).

<sup>54</sup> UNICEF Innocenti Research Centre (n 31) 17.

<sup>55</sup> European Commission, Education and Disability/Special Needs. Policies and practices in education, training and employment for students with disabilities and special educational needs in the EU – An independent report prepared for the European Commission by the NESSE network of experts (EU, 2012) 19, available at: <http://www.nesse.fr/nesse/activities/reports/activities/reports/disability-special-needs-1> (accessed 2 February 2016).

<sup>56</sup> UNICEF Innocenti Research Centre (n 31) 17.

A main obstacle often put forward is that inclusive education is too costly and that states do not have the necessary resources. This is, however, a false argument, especially since there is almost unanimity to the contrary. Both the United Nations Children's Fund (UNICEF) and the OECD, for instance, hold that inclusive education systems are less expensive than segregated education systems.<sup>57</sup> That inclusive education is less expensive than segregated education is also confirmed in the Salamanca Statement, which declares that inclusive education 'would improve the efficiency and ultimately the cost-effectiveness of the entire education system'.<sup>58</sup> Money can be saved not only on school buildings but also on administration, materials and transport. Inclusive education is therefore economically feasible and even more beneficial for states. It should, however, not just be seen the more uncostly route but also as a more efficient way for providing education to all children.<sup>59</sup>

Nonetheless, resources remain an obstacle to inclusive education. While state parties as a rule adopt national legislation allowing disabled children to enrol in mainstream schools, there are no or limited resources available to make it work. The lack of resources to progressively realise the right to inclusive education has been pointed out on many occasions by the CRPD Committee. While reacting positively to legal frameworks, it has expressed its concern about practical implementation.<sup>60</sup> On the other hand, state parties sometimes allocate considerable resources to special education. The resources are therefore available but not allocated in the way that they should be according to international law. The CRPD Committee has therefore requested that states use these resources to achieve inclusive education. To China, it recommended that the state 'reallocate resources from the special education system to promote the inclusive education in mainstream schools' and, to Qatar, that the state 'reorient

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<sup>57</sup> UNICEF, The Right of Children with Disabilities to Education: A Rights-based Approach to Inclusive Education. Position Paper (UNICEF, 2012) 38-39, available at: [http://www.unicef.org/ceecis/UNICEF\\_Right\\_Children\\_Disabilities\\_En\\_Web.pdf](http://www.unicef.org/ceecis/UNICEF_Right_Children_Disabilities_En_Web.pdf) (accessed 2 February 2016); OECD (n 46) 21. See also Inclusion International (n 51) 41; OHCHR, From Exclusion to Equality. Realizing the rights of persons with disabilities. Handbook for Parliamentarians on the Convention on the Rights of Persons with Disabilities and its Optional Protocol (UN, 2007) 84, available at: <http://www.ohchr.org/Documents/Publications/training14en.pdf> (accessed 2 February 2016).

<sup>58</sup> World Conference on Special Needs Education: Access and Equality (n 6) para. 2.

<sup>59</sup> Global Campaign for Education and Handicap International (n 52) 21.

<sup>60</sup> To Spain, the Committee requested 'allocating sufficient financial and human resources to implement the right to inclusive education' (Committee on the Rights of Persons with Disabilities, 'Concluding observations on the initial report of Spain', 19 October 2011, CRPD/C/ESP/CO/1, para. 44a). To Peru, it recommended that the state 'allocate sufficient budget resources to achieve advances in the progress for an inclusive education system for children and adolescents with disabilities' (Committee on the Rights of Persons with Disabilities, 'Concluding observations on the initial report of Peru', 16 May 2012, CRPD/C/PER/CO/1, para. 37) and, to Argentina, that the state 'allocates sufficient budgetary resources to ensure progress towards the establishment of an education system that includes students with disabilities' (Committee on the Rights of Persons with Disabilities, 'Concluding observations on the initial report of Argentina', 8 October 2012, CRPD/C/ARG/CO/1, para. 38). To Hungary, it called upon the state 'to allocate sufficient resources for the development of an inclusive education system for children with disabilities' (Committee on the Rights of Persons with Disabilities, 'Concluding observations on the initial report of Hungary', 22 October 2012, CRPD/C/HUN/CO/1, para. 41), to the Czech Republic, to 'allocate sufficient financial and human resources for reasonable accommodations that will enable boys and girls with disabilities, including intellectual disabilities, autism and deaf-blind, to receive inclusive quality education' (Committee on the Rights of Persons with Disabilities, 'Concluding observations on the initial report of Czech Republic', 17 April 2015, CRPD/C/CZE/CO/1, para. 48) and, to Ukraine, to 'allocate sufficient financial and human resources to train all teachers and ensure the accessibility of school environments and educational facilities, material and curricula' (Committee on the Rights of Persons with Disabilities, 'Concluding observations on the initial report of Ukraine', 2 October 2015, CRPD/C/UKR/CO/1, para. 45).

resources from segregated educational settings towards quality, inclusive education'.<sup>61</sup> The right to inclusive education thus involves redefining budgetary allocations for education, including transferring budgets for special schools to develop inclusive education systems.

What are the main challenges in progressively realising the right to inclusive education for disabled people?<sup>62</sup> I suggest that four of them are the most crucial for the time being: support; accessibility; teacher education; and social attitude.

#### i. Support

Depending on the nature of their individual needs, states have to ensure that support is available to guarantee the full participation of disabled children in the general education system. This includes personal assistance, including medical assistance, but also equipment and material, including Braille and sign language.<sup>63</sup> In practice, however, it appears that these measures are either missing or inadequate compared to the disabled children's individual needs.<sup>64</sup> The CRPD Committee has expressed its concern that such measures are lacking in several states. To Austria, it indicated that 'insufficient efforts are being made to support inclusive education of children with disabilities' and, to Sweden, that there were 'reports indicating that some children with needs for extensive support cannot attend school due to a lack of support'.<sup>65</sup> It also regretted 'the lack of clarity regarding the extent to which pupils with disabilities can receive adequate support and accommodation to facilitate their education' in Denmark.<sup>66</sup> It noticed '[t]he lack of accessible schools and didactic materials, including textbooks in Braille and sign-language interpreters' in Mexico.<sup>67</sup> As a result, support for disabled children in mainstream schools remains an important challenge in progressively realising the right to inclusive education.

#### ii. Accessibility

In order to achieve inclusive education, disabled children must be able to attend mainstream schools. School buildings, including classrooms and toilets, however, are in many cases inaccessible to these children.<sup>68</sup> As mentioned earlier, the general education system has been constructed without such children in mind, especially in wealthier states. Although efforts have been made, accessible environments remain an issue, which also concerns transportation to school.<sup>69</sup> The CRPD Committee was 'concerned about poor accessibility in schools' in

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<sup>61</sup> Committee on the Rights of Persons with Disabilities, 'Concluding observations on the initial report of China', 15 October 2012, CRPD/C/CHN/CO/1, para. 36; Committee on the Rights of Persons with Disabilities, 'Concluding observations on the initial report of Qatar', 2 October 2015, CRPD/C/QAT/CO/1, para. 44.

<sup>62</sup> Although the CRPD Committee refers to the progressive realisation of economic, social and cultural rights, it could deepen the issue both by discussing the available resources and by examining the challenges involved with regard to the right to inclusive education (Draft General Comment 39). A thorough discussion on this issue is very important, given that state parties need to know what measures they must adopt in order to fulfil their obligations under the Convention and stakeholders be able to hold them accountable for implementing the right to education of disabled people.

<sup>63</sup> Article 24(3), CRPD (n 1).

<sup>64</sup> Inclusion International (n 51) 65-66.

<sup>65</sup> Committee on the Rights of Persons with Disabilities, 'Concluding observations on the initial report of Austria', 30 September 2013, CRPD/C/AUT/CO/1, para. 40; Committee on the Rights of Persons with Disabilities, 'Concluding observations on the initial report of Sweden', 11 April 2014, CRPD/C/SWE/CO/1, para. 47.

<sup>66</sup> Committee on the Rights of Persons with Disabilities, 'Concluding observations on the initial report of Denmark', 30 October 2014, CRPD/C/DNK/CO/1, para. 52.

<sup>67</sup> Committee on the Rights of Persons with Disabilities, 'Concluding observations on the initial report of Mexico', 27 October 2014, CRPD/C/MEX/CO/1, para. 47.

<sup>68</sup> UNICEF (n 31) 16-17.

<sup>69</sup> Inclusion International (n 36) 82.

Belgium, for instance.<sup>70</sup> Moreover, accessibility is not only physical but also relates to school curriculum as well as teaching methods and skill evaluation.<sup>71</sup> The latter are not flexible enough, and, by their very nature, exclude many children with learning difficulties.<sup>72</sup> School curricula are generally based on target assessments that are ill-suited to their individual needs, because they rely on averages and are not adapted to their real capacities.<sup>73</sup> Accessibility is thus a serious challenge in progressively realising the right to inclusive education.

### iii. Teacher education

A crucial aspect of inclusive education is the training of teaching staff. Teachers are often not equipped to deal with issues related to disability.<sup>74</sup> Neither does their education include enough disability-related modules nor are they provided with adequate support to teach disabled children. If disability is included in teacher education, it is only optional and to qualify to work in special schools. The CRPD Committee, for instance, regretted ‘the continuing existence of the special education model ... and that training for teachers and other professional staff continues to be provided within this specialised framework’ in Costa Rica.<sup>75</sup> For those teaching disabled children in mainstream schools, too few resources are available to help them adapt their teaching methods.<sup>76</sup> The CRPD Committee recommended that Gabon ensure ‘mandatory pre- and in-service training for all teachers and other education personnel on inclusive quality education’ and that Qatar give ‘mandatory in-service training of all teachers and all staff in education facilities on quality, inclusive education’.<sup>77</sup> Providing teachers with support allows them to address particular problems and change their approaches. In reality, staff members often have to work in isolation with pressure from the top to meet educational targets and do not get support to find solutions.<sup>78</sup> As a result, they are afraid that they will not be able to cope with disabled children and that inclusive education will further increase their workload. The failure to educate teachers in issues related to disability is therefore a major challenge in progressively realising the right to inclusive education.

### vi. Social attitude

If inclusive education is to become reality, it is essential that disabled children feel welcome in mainstream schools. Yet, these children are surrounded by stereotypes and prejudices, and are considered ill-fitted to the general education system. According to UNICEF, ‘some of the most significant barriers result from the legacy of policies and structures that have influenced attitudes and mind sets and so created resistance to change’.<sup>79</sup> Disabled children are often even the victims of violence and abuse,<sup>80</sup> and may therefore find the experience of attending

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<sup>70</sup> Committee on the Rights of Persons with Disabilities, ‘Concluding observations on the initial report of Belgium’, 28 October 2014, CRPD/C/BEL/CO/1, para. 36.

<sup>71</sup> Slee (n 51) 40.

<sup>72</sup> Inclusion International (n 51) 82-83.

<sup>73</sup> K Runswick-Cole, ‘Time to end the bias towards inclusive education?’ (2011) 38 (3) BJSE 112-19, 115-16.

<sup>74</sup> EASPD, Barometer of Inclusive Education in Selected European Countries (University of Siegen, 2011) 25, available at: <http://www.investt.eu/sites/default/files/barometerreport.pdf> (accessed 2 February 2016).

<sup>75</sup> Committee on the Rights of Persons with Disabilities, ‘Concluding observations on the initial report of Costa Rica’, 12 May 2014, CRPD/C/CRI/CO/1, para. 45.

<sup>76</sup> Global Campaign for Education and Handicap International (n 52) 24.

<sup>77</sup> Committee on the Rights of Persons with Disabilities, ‘Concluding observations on the initial report of Gabon’, 2 October 2015, CRPD/C/GAB/CO/1, para. 53; Committee on the Rights of Persons with Disabilities, ‘Concluding observations on the initial report of Qatar’, 2 October 2015, CRPD/C/QAT/CO/1, para. 44.

<sup>78</sup> UNICEF (n 53) 33.

<sup>79</sup> UNICEF Innocenti Research Centre (n 31) 17.

<sup>80</sup> M Rioux and P Pinto, ‘A Time for the Universal Right to Education: Back to the Basics’ (2010) 31 BJSE 621, 630-31.

mainstream schools poor despite the advantages it holds for them in terms of participation in society.<sup>81</sup> This is an argument often made by these children and their families to justify their refusal to participate in the general education system. While the CRPD Committee has not paid particular attention to the issue, it declared its concern to New Zealand ‘at reports indicating that children with disabilities experience bullying in schools’.<sup>82</sup> Because disabled children may be subject to mistreatment and stigmatisation, their families may dislike inclusive education and prefer segregated education for them.<sup>83</sup> On the school’s side, there is a fear that disabled children will push the level of education downward.<sup>84</sup> This fear is fuelled by the fact that the standard tests which are used to determine the level of education are inappropriate for inclusive education.<sup>85</sup> As a result, schools are not willing to include disabled children and do sometimes little to address negative social attitudes towards them. This is perhaps the greatest challenge in progressively realising the right to inclusive education.

The question is whether inclusive education is possible under any circumstances. Even if the four aforementioned challenges in progressively realising the right to inclusive education were addressed, it remains possible that such education might not be suited for everybody. Some have indeed argued that inclusive education will never be fully achieved and that so doing is not desirable anyway.<sup>86</sup> In addition, disabled people may not always want inclusive education, as is the case with deaf and blind or deafblind people who advocated during the CRPD’s negotiation that they should be able to choose special education.<sup>87</sup> Simply responding that failure to educate disabled children in mainstream schools demonstrates that the general education system is not truly inclusive is too easy an answer. It is not any better to argue that the varied needs of disabled children cannot always be met – as so often made to defend the existence of special schools.<sup>88</sup> This reflects the debate about ‘universalist inclusion’ versus ‘moderate inclusion’, with advocates for inclusion ‘without exception’ and for inclusion ‘as far as possible’.<sup>89</sup> It is worth noting in this regard that article 24 of the CRPD does not prevent state parties from establishing special schools. However, neither does it compel them to be equipped with such schools.<sup>90</sup> State parties therefore are afforded a certain leeway in implementing the right to education of disabled people, provided that education systems are not segregating on the basis of impairments.<sup>91</sup>

The real question one must therefore ask is: to what extent can we build inclusive education systems in reality? The problem is recognised in the Salamanca Statement, which holds that ‘the fundamental principle of the inclusive school is that all children should learn together, wherever possible, regardless of any difficulties or differences they may have’.<sup>92</sup> By requiring

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<sup>81</sup> S Shah and M Priestley, *Disability and Social Change. Private Lives and Public Policies* (Policy Press, 2012) 107.

<sup>82</sup> Committee on the Rights of Persons with Disabilities, ‘Concluding observations on the initial report of New Zealand’, 31 October 2014, CRPD/C/NZL/CO/1, para. 49.

<sup>83</sup> Global Campaign for Education and Handicap International (n 52) 26.

<sup>84</sup> *Ibid.*

<sup>85</sup> L Liasidou, ‘Inclusive Education and Critical Pedagogy at the Intersections of Disability, Race, Gender and Class’ (2012) 10 JCEPS 168, 175.

<sup>86</sup> D Anastasiou and J. Kauffman, ‘Disability as Cultural Difference: Implications for Special Education’ (2012) 33 RSE 139-49, 143-44.

<sup>87</sup> B Shaw, ‘Inclusion or Choice? Securing the Right to Inclusive Education for All’ in Sabatello and Schulze (n 10) 58, 62.

<sup>88</sup> Anastasiou and Kauffman (n 88) 143-44.

<sup>89</sup> Norwich (n 40) 132.

<sup>90</sup> Arnardóttir (n 18) 214-215.

<sup>91</sup> de Beco (n 8) 285.

<sup>92</sup> World Conference on Special Needs Education: Access and Equality (n 6) para. 7. Emphasis added.



that ‘States Parties ... ensure an inclusive education system at all levels and lifelong learning’,<sup>93</sup> the CRPD has however removed such precautionary language. Disabled children therefore have a right to inclusive education, which means that all possible efforts must be done to reach the objective.

It might nonetheless be that education systems cannot be adapted to all disabled people. Not only are there limits to the steps that can be taken to achieve inclusive education, but a ‘universal design’ can be very difficult to apply in the area of education. There are limits to the extent to which teaching methods and skill evaluation, not to mention the school curriculum, can be differentiated in single settings. Disproportionate consequences can also be attached to removing certain obstacles to participation in the general education system. Inclusive education, therefore, may involve costs that are unbearable or detrimental to others. This concerns especially persons with intellectual disabilities.<sup>94</sup> It would be hard to imagine having education systems where maths or written language would no longer be taught.<sup>95</sup> The price for children who are able to acquire those skills would be too high. Still, this does not mean that those who cannot achieve some basic mathematical or literacy skills must necessarily be segregated. States must first fulfil their duty to provide ‘reasonable accommodation’ to disabled people. They must examine the possibility of adopting individual measures that respond to children’s individual needs so as to allow them to attend mainstream schools. If there are constraints in adaptations that can be made, ‘reasonable accommodation’ can thus assist to make education inclusive to the greatest possible extent. Such accommodation may help disabled children to participate in the general education system albeit differently with regard to some, but not all, learning activities. However, if the balance results in ‘unreasonableness’, these children may temporarily be better off outside the general education system in the event that inclusive education has not yet been fully achieved in a given state. Although this would for sure amount to a violation of article 24 of the CRPD and therefore must be avoided by any means, the opposite might not be any better, since it would result in the marginalisation of disabled children in mainstream schools. When the aim remains to make these children reach the norm and separate them from others in order to achieve this aim, the result will be some form of segregation in such schools but will not be inclusive education according to the Convention. Forcing children to be educated in mainstream schools might thus do more harm than good, and, as argued by Marcia Rioux and Paula Pinto, end up being ‘a charade of inclusion’.<sup>96</sup>

### 3. Tools for the Transition to Inclusive Education Systems

With the adoption of the CRPD, the principle of inclusive education has been increasingly advocated, often without closely examining what to do with existing education systems. Despite its ratification by many countries and endorsement by many international organisations, changes are yet to take place on the ground and discussions have almost led nowhere.<sup>97</sup> It is therefore no wonder that some continue to defend special schools, considering that inclusive education is unrealistic and utopian.<sup>98</sup> Leaving aside rhetoric, the best way of to

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<sup>93</sup> Article 24 (1), CRPD.

<sup>94</sup> J Wolff, ‘Cognitive Disability in a Society of Equals’ (2009) 40 *Metaphilosophy* 402, 407.

<sup>95</sup> Norwich (n 40) 6.

<sup>96</sup> Rioux and Pinto (n 82) 622.

<sup>97</sup> Moore and Slee (n 44) 235.

<sup>98</sup> D Anastasiou and J Kauffman, ‘A Social Constructionist Approach to Disability. Implications for Special Education’ (2011) 77 *Exceptional Children* 367, 379.

achieve such education is not to condemn segregated education systems but to embark slowly, but surely, on building inclusive ones. Moving expeditiously towards the latter will not lead to inclusive education in accordance with the CRPD. It may only lead to the superficial development of an inclusive education system, thus falling short of its genuine objective. Those who are sceptical about inclusive education often argue that it is usually not truly achieved and that disabled children's individual needs are in fact not met.<sup>99</sup> Closing special schools with a view to achieving inclusive education, therefore, is not the right approach. Instead of focusing on special education, the solution is to work incrementally by endeavouring to adapt the general education system. It is only by making this system inclusive step by step that reliance on special schools will start to decrease. The best way to move forward is therefore to take measures to make mainstream schools as inclusive as possible, the success of which will determine the need for special education in the future. Moreover, in so doing will be beneficial to all children and give discernible meaning to inclusiveness.<sup>100</sup>

How can states ensure the transition to inclusive education systems? Article 24 of the CRPD does not answer this question. Although it clearly sets out the principle of inclusive education and indicates the type of measures to be adopted for this purpose, it does not provide a blueprint as to how to get from one point to another. For state parties that have built segregated education systems, it is impossible to replace such systems with inclusive ones suddenly. There is a grey zone through which these states have to navigate without much guidance from the Convention. While it is not to deny that more efforts are needed, this lack of guidance may explain why such little progress in progressively realising the right to inclusive education has thus far been made.

Therefore, state parties need tools with which to help transform their education systems. Since they must do so in a way that complies with the CRPD, it is essential that these tools be linked to obligations for the right to education of disabled people. While states parties may choose how to fulfil their human rights obligations, such tools can help with presenting different options and determine how best to achieve compliance with human rights treaties. Two such tools will be examined: national human rights action plans and human rights indicators. The first aims to implement article 24 of the Convention and the second to monitor the measures enacted. Use of these tools was encouraged initially by the Committee on the Right of the Child,<sup>101</sup> and later by other UN treaty bodies as well as the Office of the UN High Commissioner for Human Rights (OHCHR).

First, national human rights action plans are tools with which states can implement human rights.<sup>102</sup> In order to encourage their development, the OHCHR published a Handbook on National Human Rights Plans of Action.<sup>103</sup> National human rights action plans provide the opportunity for a state to examine its human rights obligations and to follow-up UN treaty

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<sup>99</sup> Ibid, 380.

<sup>100</sup> Minow (n 43) 56.

<sup>101</sup> Committee on the Rights of the Child, General Comment No. 5, General measures of implementation of the Convention on the Rights of the Child (articles 4, 42 and 44, at para. 6), 3 October 2003, CRC/GC/2003/5, paras 29-36 and 45-50.

<sup>102</sup> J Grimheden, 'The Self-Reflective Human Rights Promoter' in J Grimheden and R Ring (eds), *Human Rights Law: From Dissemination to Application. Essays in Honour of Göran Melander* (Martinus Nijhoff Publishers, 2006) 119, 126.

<sup>103</sup> OHCHR Professional Training Series No. 10, *Handbook on National Human Rights Plans of Action* (UN, 2002).

bodies' recommendations.<sup>104</sup> They define priorities in order to improve human rights situations, through a series of budgeted and time-framed measures. Their use was promoted at the international level, and even made compulsory for the right to education. The Vienna Declaration and Programme of Action recommended that states 'consider the desirability of drawing up a national action plan identifying steps whereby that state would improve the promotion and protection of human rights'.<sup>105</sup> Article 14 of the ICESCR includes the obligation to set up national human rights action plans in case the right to free and compulsory education is not achieved within two years after the ratification of the ICESCR.<sup>106</sup> Although they have been criticised for amounting to no more than window dressing, national human rights action plans can achieve results provided they fulfil certain conditions and are accompanied by political will, stakeholder awareness and sound planning.<sup>107</sup>

As an implementation tool for the right to education of disabled people, national human rights action plans can foster a national-wide dialogue between various stakeholders with the active participation of disabled people (as required by article 4 (3), CRPD) on the way in which the right to inclusive education can be progressively realised. Through such plans, state parties can identify the obstacles to inclusive education and establish targets to ensure the transition to inclusive education systems.

Though national human rights action plans are not mentioned in the Convention, the CRPD Committee has noted their utility in relation to the right to education of disabled people. To Germany, it recommended to '[i]mmediately develop a strategy, action plan, timeline and targets to provide access to a high quality inclusive education system across all Länder'.<sup>108</sup> To Kenya, it requested to '[e]stablish a time frame for the transition process from segregated to inclusive quality education and ensure that budgetary, technical and personal resources are available to complete the process'.<sup>109</sup> The Global Campaign for Education and Handicap International also considered that '[a]dopting appropriate legislation, developing policies or national plans of action, are important starting point to inclusion for all'.<sup>110</sup>

Indeed, national human rights action plans could comprise a series of measures to achieve inclusive education, including those that can meet the challenges to realise progressively the right to inclusive education outlined previously. Such plans can address the recommendations by the CRPD Committee and other UN bodies. The measures would include 'assistive technology and support in classrooms [as well as] accessible and adapted educational materials and curricula'.<sup>111</sup> They would also provide for 'supplementary classes,

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<sup>104</sup> Ibid., 62.

<sup>105</sup> World Conference on Human Rights, Vienna Declaration and Programme of Action, 25 June 1993, A/Conf.157/23, Part II, para. 71.

<sup>106</sup> The Committee on Economic, Social and Cultural Rights issue a general comment on such plans: Committee on Economic, Social and Cultural Rights, General Comment No. 11, Plans of action for primary education (art. 14), 10 May 1999, E/C.12/1999/4.

<sup>107</sup> A Chalabi, 'The Problem-Oriented Approach to Improving National Human Rights Action Plans' (2015) 7 JHRP 272.

<sup>108</sup> Committee on the Rights of Persons with Disabilities, 'Concluding observations on the initial report of Germany', 17 April 2015, CRPD/C/DEU/CO/1, para. 46.

<sup>109</sup> Committee on the Rights of Persons with Disabilities, 'Concluding observations on the initial report of the Republic of Kenya', 30 September 2015, CRPD/C/KEN/CO/1, para. 44.

<sup>110</sup> Global Campaign For Education and Handicap International (n 52) 19.

<sup>111</sup> Committee on the Rights of Persons with Disabilities, 'Concluding observations on the initial report of the Republic of Korea', 29 October 2014, CRPD/C/KOR/CO/1, para. 46; Committee on the Rights of Persons with Disabilities, 'Concluding observations on the initial report of Azerbaijan', 12 May 2014, CRPD/C/AZE/CO/1, para. 41.

alternative/additional forms of communication, special tutors or support staff, and nutritious meals'.<sup>112</sup> Moreover, measures would be adopted to improve 'accessibility of the school environment, materials and curricula',<sup>113</sup> by 'altering the physical environment, such as the design of hallways and classrooms, desks, widening entrances, building ramps, installation of elevators, altering or reconsidering geographical locations [and] adapting rules and admission standards',<sup>114</sup> and by providing 'didactic materials, including Braille and sign language',<sup>115</sup> as well as 'a programme for continuous training in sign language in mainstream schools'.<sup>116</sup> They would also include reviewing education methods and examine how curricula could be better adjusted to individual needs and target assessments related to individual progress.<sup>117</sup> Furthermore, the measures would provide for enhanced training on issues related to disability. They would ensure that 'inclusive education is an integral part of core teacher training in universities' and provide for 'adequate training to teachers and other employees in the school system ... to ensure quality education for pupils with disabilities' as well as 'continuous training for teachers so that they can cope with the demands of inclusive education'.<sup>118</sup> They can thus make that such training be included in both specialisation and general courses. Finally, the measures could foresee promoting respect for diversity and combating stereotypes and prejudices against disabled children, including through 'anti-bullying programmes'.<sup>119</sup>

The second tool at states' disposal is human rights indicators for monitoring compliance with human rights treaties.<sup>120</sup> It has received a great deal of attention in recent years. The Vienna Declaration and Programme of Action recommended developing 'a system of indicators to measure progress in the realisation of the rights set forth in the [ICESCR]'.<sup>121</sup> The Committee on Economic, Social and Cultural Rights also recommended that '[t]he national education strategy should include mechanisms, such as indicators and benchmarks on the right to education, by which progress can be closely monitored'.<sup>122</sup> The OHCHR subsequently developed a methodology for their establishment, dividing human rights indicators into structural, process, and outcome indicators. These indicators address the essential aspects of human rights implementation, that is, intention, effort, and result. Building on its work in the area for several years, the OHCHR drafted a guide which outlines this methodology and

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<sup>112</sup> OHCHR, Thematic Study on the Right of Persons with Disabilities to Education, A/HRC/25/29, 18 December 2013, 8.

<sup>113</sup> Committee on the Rights of Persons with Disabilities, 'Concluding observations on the initial report of Germany', 17 April 2015, CRPD/C/DEU/CO/1, para. 46; Committee on the Rights of Persons with Disabilities, 'Concluding observations on the initial report of Ukraine', 2 October 2015, CRPD/C/UKR/CO/1, para. 45.

<sup>114</sup> Munoz (n 50) 8.

<sup>115</sup> Committee on the Rights of Persons with Disabilities, 'Concluding observations on the initial report of Mexico', 27 October 2014, CRPD/C/MEX/CO/1, para. 48.

<sup>116</sup> Committee on the Rights of Persons with Disabilities, 'Concluding observations on the initial report of the Republic of Kenya', 30 September 2015, CRPD/C/KEN/CO/1, para. 44.

<sup>117</sup> UNICEF (n 53) 71 and 75.

<sup>118</sup> Committee on the Rights of Persons with Disabilities, 'Concluding observations on the initial report of Azerbaijan' (2013) CRPD/C/AZE/CO/1, para. 46; Committee on the Rights of Persons with Disabilities, 'Concluding observations on the initial report of Denmark', 30 October 2014, CRPD/C/DNK/CO/1, para. 53; Committee on the Rights of Persons with Disabilities, 'Concluding observations on the initial report of Ecuador', 27 October 2014, CRPD/C/ECU/CO/1, para. 37.

<sup>119</sup> Committee on the Rights of Persons with Disabilities, 'Concluding observations on the initial report of New Zealand', 31 October 2014, CRPD/C/NZL/CO/1, para. 50.

<sup>120</sup> G de Beco, 'Human Rights Indicators: From Theoretical Debate to Practical Application' (2013) 5 JHRP 380.

<sup>121</sup> World Conference on Human Rights (n 105) Part II, para. 98.

<sup>122</sup> Committee on Economic, Social and Cultural Rights, General Comment No. 13, The rights to education (art. 13), 8 December 1999, E/C.12/1999/10, para. 52.

provides lists of illustrative indicators relating to several human rights.<sup>123</sup> Article 31 of the CRPD also requires that state parties collect data enabling them to implement the Convention, which indirectly provides a legal basis in international law for the development of human rights indicators. While many such indicators have been developed, few used to date. An approach which should increase their usage is one that takes their future application into account by being user-friendly and by providing guidelines.<sup>124</sup>

Several organisations have stressed the necessity of developing indicators on the right to education of disabled people. UNICEF acknowledged that it is ‘important to construct appropriate indicators against which to measure progress in realising the right to inclusive education for children with disabilities’ and that so doing will ‘enable the collection, management and tracking of data related to children with disabilities in mainstream schools in order to strengthen their ability to plan for and assess progress towards achieving the right to inclusive education for all children with disabilities’.<sup>125</sup> Likewise, the Global Campaign For Education and Handicap International considered that ‘[i]n order to draft and deliver inclusion plans, governments must have reliable data in order to set targets and measure progress’ and that ‘governments need to understand the current situation of disability and education in their countries, by improving data collection methods and techniques’.<sup>126</sup> The CRPD Committee also asked Kenya to ‘collect disaggregated data on the advancement of the inclusive education system’.<sup>127</sup>

Existing initiatives could facilitate the development of indicators on the right to education of disabled people. While the OHCHR has included the right to education in its lists of illustrative indicators and provided structural, outcome, and process indicators relating to this right,<sup>128</sup> the Right to Education Project has developed indicators on the right to education according to the 4-A framework (consisting of availability, accessibility, acceptability, and adaptability) and provided a set of more than 200 indicators.<sup>129</sup>

Hence, a set of indicators based on the standards relating to education in the CRPD could be created in light of existing material. This would require adopting a framework that allows measuring progress in the full realisation of the right to inclusive education, onto which these indicators would be incorporated in a consistent manner. Such a framework could include structural indicators (focusing on legislation, action plans, budget, ministerial departments, monitoring bodies etc.), process indicators (focusing on accessibility, support measures, flexible curricula, teacher education, promotion campaigns, complaints procedures etc.) and outcome indicators (focusing on attendance, completion and drop-out (by education level) in mainstream schools as well as social attitudes, recreational activities, transition to work etc.). States would then collect data for applying the indicators so that their achievements can be monitored. In order to detect discrimination, these data could also be disaggregated, as required by article 31(2) of the CRPD. Thanks to their regular application, such indicators may track the pace at which the transition to inclusive education systems is taking place and where obstacles to inclusive education still remain.

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<sup>123</sup> OHCHR, Human Rights Indicators. A Guide to Measurement and Implementation (OHCHR, 2012), available at: [http://www.ohchr.org/Documents/Publications/Human\\_rights\\_indicators\\_en.pdf](http://www.ohchr.org/Documents/Publications/Human_rights_indicators_en.pdf) (accessed 2 February 2016).

<sup>124</sup> de Beco (n 120) 380.

<sup>125</sup> UNICEF (n 53) 46-47.

<sup>126</sup> Global Campaign for Education and Handicap International (n 52) 22.

<sup>127</sup> Committee on the Rights of Persons with Disabilities, ‘Concluding observations on the initial report of the Republic of Kenya’, 30 September 2015, CRPD/C/KEN/CO/1, para. 44.

<sup>128</sup> OHCHR (n 123) 93.

<sup>129</sup> <http://www.right-to-education.org/topics/monitoring-indicators> (accessed 2 February 2016).

National human rights action plans and human rights indicators could thus back efforts to hold states accountable for the implementation of the right to education of disabled people. States must develop such tools without delay, since this can be seen as a procedural obligation to progressively realise the right to inclusive education.<sup>130</sup> These tools can be beneficial for various actors, including government and organisations of disabled people (DPOs), and strengthen monitoring processes, including state reporting and disability advocacy. Furthermore, their creation may help to improve the understanding of the right to inclusive education. Provided the aforementioned tools correctly reflect the various elements of the right to education of disabled people under the CRPD, the national human rights action plans and human rights indicators can as such operate as a promotion tool for this right.

This does not mean however that the use of these tools will lead to similar implementation of the right to education of disabled people in all state parties to the CRPD. While recalling states' principal role in promoting and protecting human rights, the Vienna Declaration and Programme of Action recognised that states have different needs and priorities.<sup>131</sup> States may take their particularities into account when developing national human rights action plans and human rights indicators. 'Context-specific' indicators could exist alongside 'universal' indicators.<sup>132</sup> National human rights action plans can likewise vary according to the social and political context.<sup>133</sup>

UN agencies including the OHCHR, UNICEF, and UNESCO, could make their expertise available to states for developing national human rights action plans and human rights indicators. Partnerships could be established at the national level for the purpose. Stakeholders would include education ministries, national DPOs, parent associations, UNESCO National Commissions, social services, statistical institutes as well as focal points, coordination mechanisms and independent mechanisms, including national human rights institutions, set up under article 33 of the CRPD.<sup>134</sup>

Finally, the CRPD Committee has an important role in developing tools to ensure the transition to inclusive education systems. It could encourage international collaboration to provide an overall review of relevant experiences to date and to undertake an examination of the way in which these experiences could help to improve such tools within their particular context. DPOs should be invited to participate in the process, so that these tools address the issues that matter most for disabled people and reflect their real-life experience in education. When national human rights action plans and human rights indicators are available, the Committee could request state parties to provide information on them and evaluate the state party's capacity to implement article 24 of the CRPD. When examining state reports, the Committee could then indicate to states parties which targets need to be achieved by the national human rights action plans and evaluated by the human rights indicators for the next

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<sup>130</sup> In this regard, the CRPD Committee considers that 'a national educational strategy ... on the basis of inclusion and equality of opportunity' is part of the 'minimum core obligations' under article 24 (Draft General Comment, para. 40). It could provide the same with regard to the collection of data for the implementation of the right to education of disabled people.

<sup>131</sup> According to the Vienna Declaration and Programme of Action, '[t]he significance of national and regional particularities and various historical, cultural and religious backgrounds must be borne in mind' when promoting and protecting human rights. See World Conference on Human Rights (n 105) Part I, para. 5.

<sup>132</sup> OHCHR (n 123) 44.

<sup>133</sup> See OHCHR Professional Training Series No. 10 (n 103) 8.

<sup>134</sup> See G de Beco, 'Article 33 (2) of the UN Convention on the Rights of Persons with Disabilities. Another Role for National Human Rights Institutions?' (2011) 29 NQHR 84.



reporting cycle. In this way, the Committee could measure progress towards the full realisation of the right to inclusive education for disabled people.

#### IV. Conclusion

The CRPD made inclusive education a goal to be achieved for all children. Article 24(1) provides that ‘States Parties shall ensure an inclusive education system at all levels and lifelong learning’. Nearly ten years after the CRPD was adopted, the time has now come to achieve this. However, the question as to how to make the principle of inclusive education a reality remains. This article argued that more attention has to be paid to the measures that must be adopted with a view to progressively realising the right to inclusive education. The focus should be on building inclusive education systems, not on eradicating special schools. The aim therefore is to transform these systems by making regular schools inclusive for disabled children. However, obstacles to inclusive education can sometimes be hard to remove. Although the CRPD established the right to inclusive education, education system cannot be endlessly adapted to disabled children. Mainstream schools should be a meaningful option for these children. Disabled children’s mere ‘placement’ in those schools will not comply with the Convention. This article, therefore, argued that inclusive education will remain an unfinished task requiring permanent efforts to guarantee disabled children’s’ full participation in the general education system.

The tools examined here can contribute towards reaching this goal. Provided that they are tailored to states’ particularities, these tools can help identify the different steps that must be taken to achieve inclusive education. They can serve to make state parties more accountable for their implementation of article 24 of the Convention, and bring this implementation under the scrutiny of the CRPD Committee. The Committee would then be able to assess whether governments have fulfilled their human rights obligations in this regard. Experience is available to develop and adapt these tools for this purpose. They therefore provide opportunities for the CRPD Committee to set the stage for imparting meaning to the right to inclusive education of disabled people.