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**Annual report of the United Nations High Commissioner
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High Commissioner and the Secretary-General**

**Promotion and protection of all human rights, civil,
political, economic, social and cultural rights,
including the right to development**

Thematic study on the right of persons with disabilities to education

Report of the Office of the United Nations High Commissioner for Human Rights

Summary

The present study focuses on inclusive education as a means to realize the universal right to education, including for persons with disabilities. It analyses the relevant provisions of the Convention on the Rights of Persons with Disabilities, highlights good practices and discusses challenges and strategies for the establishment of inclusive education systems.

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I. Introduction

1. In its resolution 22/3, the Human Rights Council requested the Office of the United Nations High Commissioner for Human Rights (OHCHR) to prepare a study on the right of persons with disabilities to education, in consultation with States and other relevant stakeholders, including the United Nations Children's Fund (UNICEF), the United Nations Educational, Scientific and Cultural Organization (UNESCO), regional organizations, the Special Rapporteur on disability of the Commission for Social Development, civil society organizations, including organizations of persons with disabilities, and national human rights institutions. The resolution also requested that the study be made available on the OHCHR website, in an accessible format, prior to the twenty-fifth session of the Human Rights Council.

2. To this end, OHCHR invited contributions from Member States, UNICEF, UNESCO, regional organizations, civil society organizations and organizations of persons with disabilities, the Special Rapporteur on disability of the Commission for Social Development, and national human rights institutions, transmitting a set of questions related to education of persons with disabilities. As a result, OHCHR received 39 responses from States, 12 from national human rights institutions and 31 from civil society organizations and other stakeholders. The full texts of all submissions received are available on the OHCHR website.¹

II. The right to inclusive education as a human right

A. Inclusion as a fundamental principle of education

3. The right to education is a universal right recognized by international human rights law and, as such, applies to all persons, including persons with disabilities. Several international instruments, inter alia, the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights and the Convention on the Rights of the Child, affirm the core principles of universality and non-discrimination in the enjoyment of the right to education.² Inclusive education has been acknowledged as the most appropriate modality for States to guarantee universality and non-discrimination in the right to education. The Convention on the Rights of Persons with Disabilities recognizes that, for persons with disabilities to exercise this right, inclusive education systems must be in place and, consequently, the right to education is a right to inclusive education.

4. School systems have typically adopted one of three different approaches to persons with disabilities: exclusion, segregation and integration. Exclusion occurs when a student is kept away from school on the basis of the existence of an impairment, without another educational opportunity on equal terms with other students being provided. Through this approach, a student with disabilities is prevented from joining the education system on the basis of age, development or diagnosis and is placed in a social welfare or health-care environment without access to education. Segregation occurs when such a student is sent to a school designed to respond to a particular impairment, usually in a special-education school system. Finally, integration is when a student with an impairment is placed in a

¹ www.ohchr.org/EN/Issues/Disability/Pages/SubmissionStudyEducation.aspx.

² See also concluding observations of the Committee on the Rights of Persons with Disabilities on Argentina, CRPD/C/ARG/CO/1; and Spain, CRPD/C/ESP/CO/1.

mainstream school,³ so long as he or she can adjust to fit the standardized requirements of the school. The integration approach focuses solely on enhancing the ability of the student to comply with the established standards.⁴

5. Approaches that exclude, segregate and integrate on the basis of the existence of an impairment may be taken at the same time in the same country, and may affect others in addition to persons with disabilities. The inclusive education approach has emerged as a response to these discriminatory approaches. According to its preface, the Salamanca Statement and Framework for Action on Special Needs Education (“Salamanca Statement”) is informed by the “recognition of the need to work towards ‘schools for all’ — institutions which include everybody, celebrate differences, support learning, and respond to individual needs”. On the basis of the Salamanca Statement, inclusive education⁵ systems are those with schools using “a child-centred pedagogy capable of successfully educating all children, including those who have serious disadvantages and disabilities” (Framework for Action, para. 3). The Statement also calls for a change in social perspective. As stated by the former Special Rapporteur of the Commission for Social Development for monitoring the implementation of the Standard Rules on the Equalization of Opportunities for Persons with Disabilities, “all children and young people of the world, with their individual strengths and weaknesses, with their hopes and expectations, have the right to education. It is not our education systems that have a right to certain types of children. Therefore, it is the school system of a country that must be adjusted to meet the needs of all children.”⁶

6. The shift towards an inclusive approach to education was reflected at the 1990 World Conference on Education for All, with which the problem of the exclusion of students with disabilities from school systems was acknowledged. The need for integration in mainstream schools was recognized in the Warnock Report as early as 1978.⁷ The adoption in 1993 of the Standard Rules on the Equalization of Opportunities for Persons with Disabilities provided for integration, but it was not until 1994 that the Salamanca Statement, signed by 92 Governments, called for inclusive education. The Statement required mainstream schools to provide quality education to all students, including students with disabilities, without discriminating on the basis of the higher requirements of support that they may need (p. viii). The Dakar Framework for Action on Education for All of 2000 stressed that education systems must be inclusive and respond flexibly to the circumstances and needs of all learners.⁸ The United Nations Educational, Scientific and Cultural Organization (UNESCO) Guidelines for Inclusion of 2005 emphasize that at the core of inclusive education is the human right to education.⁹ In 2006, building on these precedents, in the Convention on the Rights of Persons with Disabilities legally binding status was given to the concept of “inclusive education systems”, which were recognized as the only

³ The terms “mainstream schools”, “general education”, “regular schools” and “ordinary schools” are commonly used to refer to schools systems that receive students with or without impairments as opposed to “special schools” that only receive students with impairments. In the present report, the first terms will be used interchangeably to refer to “general education”, as these schools are referred to in the Convention on the Rights of Persons with Disabilities.

⁴ See UNICEF, *The Right of Children with Disabilities to Education: A Right-Based Approach to Inclusive Education* (Geneva, 2012).

⁵ Inclusive education is not defined in human rights law. Notwithstanding, the Committee on the Rights of the Child has adopted a definition thereof (see paragraph 17 below).

⁶ Bengt Lindqvist, 1994.

⁷ United Kingdom of Great Britain and Northern Ireland, “Report of the Committee of Enquiry into the Education of Handicapped Children and Young People” (London, The Stationary Office, 1978).

⁸ Available from www.unesco.org/new/en/education/themes/leading-the-international-agenda/education-for-all/ (see paragraph 33).

⁹ UNESCO, *Guidelines for Inclusion: Ensuring access to Education for All, 2005* (Paris, 2005), p. 12.

means to ensure the right to education to all students, including persons with disabilities, without discrimination and on equal terms with others. In other words, in the Convention it was underscored that the right to education is in fact the right to inclusive education.

7. Inclusion is a process that recognizes: (a) the obligation to eliminate barriers that restrict or ban participation, and (b) the need to change culture, policy and practice¹⁰ of the mainstream schools to accommodate the needs of all students, including those with impairments. An inclusive education implies transforming the school system and ensuring interpersonal interactions based upon core values which allow for the full learning potential of every person to emerge. It also implies effective participation, individualized instruction and inclusive pedagogies. Some key values of inclusive education are equality, participation, non-discrimination, celebrating diversity and sharing good practices. The inclusive approach values students as persons, respects their inherent dignity and acknowledges their needs and their ability to make a contribution to society. It also acknowledges difference as an opportunity for learning, and recognizes the relationship between the school and the wider community as grounds for creating inclusive societies with a sense of belonging (not only for students but for teachers and parents too).

8. Inclusive education is socially important because it provides a sound platform for countering stigmatization and discrimination. A mixed learning environment that includes persons with disabilities allows their contributions to be valued, and prejudices and misconceptions to be progressively challenged and dismantled. Inclusive education also enhances quality education for all by leading to wider-ranging curricula and instructional strategies which contribute to the overall development of capacities and skills. This nexus of learning and development — when inclusive of a diversity of participants with varying abilities — introduces new perspectives for achieving objectives and self-esteem, and empowering individuals to build a society based on mutual respect and rights.

9. The realization of the right to education is a precondition for social and economic inclusion, and full participation in society. The right to education has, therefore, been recognized as an example of the indivisibility and interdependence of all human rights on account of its key role in the full and effective realization of other rights.¹¹ Formal education facilitates formal certification, which is increasingly required by the open job market today. This makes it necessary for persons with disabilities to obtain educational degrees and certificates equally with others in order to compete and be part of the workforce. This becomes all the more important considering that persons with disabilities suffer from disproportionately higher rates of unemployment due to discrimination.¹² Furthermore, the improved employability of persons with disabilities reduces welfare costs and contributes to economic growth. The negative impact of the unemployment of persons with disabilities on gross domestic product¹³ could be reduced by guaranteeing access to inclusive education systems.

¹⁰ See Tony Booth and Mel Ainscow, *The Index for Inclusion: Developing Learning and Participation in Schools* (Bristol, Centre for Studies on Inclusive Education, 2004).

¹¹ See Committee on Economic, Social and Cultural Rights, general comments No. 11 (1999) on plans of action for primary education and No. 13 (1999) on the right to education.

¹² For more detail on this, see OHCHR, thematic study on the work and employment of persons with disabilities, A/HRC/22/25.

¹³ Sebastian Buckup, “The price of exclusion: The economic consequences of excluding people with disabilities from the world of work”, Employment Working Paper, No. 43 (ILO, 2009).

B. Normative evolution of the right to inclusive education

1. Inclusive education in international human rights treaties and legal instruments

10. The right to education is recognized as a fundamental human right in article 26 of the Universal Declaration of Human Rights and subsequently classified by a number of legal instruments that expanded its scope and clarified State obligations. This process eventually led to the acknowledgment in the Convention on the Rights of Persons with Disabilities that inclusive education is the best modality to comply with the universality of this right. The Convention against Discrimination in Education, the International Convention on the Elimination of All Forms of Racial Discrimination and the International Covenant on Economic, Social and Cultural Rights were all advances towards this.

11. The right to education, as stated in article 13 of the Covenant, entails: (a) free and compulsory primary education for all; (b) secondary education – including technical and vocational education – and higher education available and equally accessible to all by the progressive introduction of free education; (c) the encouragement of fundamental education for adults who have not received or not completed primary education; and (d) the development of a school system, the establishment of a fellowship system, and programmes for the continuing improvement of the working conditions of teachers. In the Covenant, the right of parents or guardians to choose the kind of education that shall be given to their children is recognized, provided it conforms to the minimum educational standards.

12. Education in all of its forms and at all levels should exhibit four interrelated and essential features, namely, availability, accessibility, acceptability and adaptability¹⁴ (often referred to as the “4 As”). Availability means that an adequate number of functioning educational institutions are available; accessibility requires them to be accessible – both physically and economically – to everyone without discrimination; acceptability means that the form and content of education must be relevant, culturally appropriate and of good quality, hence acceptable to students and, wherever appropriate, to parents. And finally, adaptability requires education to be flexible in order to adapt to the changing realities and needs of the students within their diverse social and cultural settings. Adaptability is also a need to develop schools capable of successfully educating all children, and is therefore a core principle of inclusive education.

13. While in the Covenant progressive realization is provided for and the constraints placed by limited available resources recognized, there are general and specific legal obligations contained in article 13 thereof that take immediate effect, including the elimination of discriminatory provisions and the provision of primary education for all. The failure to comply with these obligations constitutes a direct violation of the right to education.¹⁵ Under the non-discrimination provision in the Covenant, a reduction of structural disadvantages is required and the achievement of effective participation and equality for all persons with disabilities is given as an aim. This provision recognizes that persons with disabilities can be best educated within the general education system, and there is an implicit call in the Covenant to States to include persons with disabilities in mainstream education and lifelong training.¹⁶

14. Other international human rights treaties, including the Convention on the Elimination of All Forms of Discrimination against Women, the Convention on the Rights

¹⁴ See Committee on Economic, Social and Cultural Rights, general comment No. 13, para. 6, and the preliminary report of the Special Rapporteur on the right to education, E/CN.4/1999/49, paras. 42–74.

¹⁵ See Committee on Economic, Social and Cultural Rights, general comments No. 13, paras. 43–59, and No. 20 (2009) on non-discrimination in economic, social and cultural rights.

¹⁶ See *ibid.*, general comment No. 5 (1994) on persons with disabilities.

of the Child and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, have looked at the specific implications of the enjoyment of the right to education for specific groups.¹⁷ The right to education was also recognized in international legal instruments pertaining to refugee law and international humanitarian law, and in several conventions of the International Labour Organization.

15. Regional human rights systems have also recognized the right to education, including the African Charter on Human and Peoples' Rights, the American Convention on Human Rights and the first Additional Protocol thereto in the area of Economic, Social and Cultural Rights, the Protocol to the European Convention on Human Rights and Fundamental Freedoms and the Inter-American Convention on the Elimination of All Forms of Discrimination against Persons with Disabilities.

16. The Committee on the Rights of the Child has advanced the right to inclusive education by adopting as core principles the maximum inclusion of children with disabilities in society (and in education), and their right to education without any discrimination, and on the basis of equal opportunity.¹⁸ Discrimination undermines the capacity of children with disabilities to benefit from educational opportunities and compromises the goal to develop their personality, talents and mental and physical abilities to their fullest potential.¹⁹ Consequently, assistance to ensure access to education in a manner conducive to achieving these goals must be provided. The resources allocated should be sufficient to cover all relevant needs, including programmes aimed at including children with disabilities in mainstream education.²⁰

17. The Committee on the Rights of the Child has endorsed the concept of inclusive education 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.²¹

2. Article 24 of the Convention on the Rights of Persons with Disabilities

18. In article 24 of the Convention, the right to education of persons with disabilities is reaffirmed and inclusive education recognized as the means to make the universal right to education effective for persons with disabilities. The Convention is the first legally binding instrument to contain an explicit reference to the concept of inclusive education. Similar to the Convention on the Elimination of All Forms of Discrimination against Women and the Convention on the Rights of the Child, the Convention on the Rights of Persons with Disabilities does not establish a new right, but rather clarifies the specific implications for persons with disabilities of enjoying the right to education "without discrimination and on the basis of equal opportunities". In this article, it is stipulated that States parties should ensure an inclusive education system at all levels and lifelong learning (para. 1). Paragraphs 2–5 of article 24 contain guidance on the measures required to establish an inclusive education system.²² It is important to note that the provisions contained within the articles must be considered in their entirety and not separately. Article 24 is connected to

¹⁷ See, for example, Committee on the Rights of the Child, general comment No. 1 (2001) on the aims of education.

¹⁸ *Ibid.*, general comment No. 9 (2006) on the rights of children with disabilities, paras. 11 and 62.

¹⁹ *Ibid.*, general comment No. 1, para. 10.

²⁰ *Ibid.*, general comment No. 9, para. 20.

²¹ *Ibid.*, para. 67.

²² The obligation for States to establish inclusive education systems does not imply any limitation on the right of parents to decide the education strategy for their children, including home schooling, as long as it provides for quality education in line with the goals and requirements arising from human rights law.

and dependent on all the others articles of the Convention and must be read under the general principles adopted in article 3. Article 24 should be read in conjunction with article 19 (living independently and being included in the community), the requirement of an inclusive education system also being a prerequisite for the full inclusion and participation in a community, and for countering the isolation and segregation, of persons with disabilities.

19. The goals of education as referred to in article 24, paragraph 1, are neither disability-specific nor disability-related. The article echoes the general objectives as proclaimed in the International Covenant on Economic, Social and Cultural Rights and reflected in the Convention on the Rights of the Child, namely, the development of human potential and sense of dignity (article 24 also refers to a sense of “self-worth”), respect for human rights (article 24 adds “human diversity”), the development of personality, talent and abilities to a person’s fullest potential, and effective participation in a free society.

20. Article 24, paragraph 2, provides for ensuring that persons with disabilities are not excluded from the general education system, which implies that students should not be rejected by mainstream schools on the basis of any impairment (art. 24, para. 2 (a)). States are also required thereby to ensure that persons with disabilities have access to an inclusive, quality and free primary education and secondary education on an equal basis with others. The concepts of accessibility and adaptability are particularly relevant in this regard. Accessibility is reinforced by article 9 of the Convention, in which State parties are required to take appropriate measures to ensure access to persons with disabilities.²³ Adaptability is an essential feature in a comprehensive review of the education system in order to make schools inclusive.

21. In article 24, paragraph 2 (c), States parties are required to provide reasonable accommodation, which, as defined in article 2 of the Convention, is based on an individual assessment to ensure the enjoyment of human rights. It is important to highlight that, under the Convention, the denial of reasonable accommodation is discrimination on the basis of disability and hence prohibited with immediate effect. Under article 24, paragraph 2 (d) and (e), States parties are obliged to provide the necessary support, including individualized support measures.

22. Article 24, paragraph 3, focuses on the equality of opportunities for persons with disabilities with special attention given to the needs of persons sharing a common form of impairment. It requires States parties to enable persons with disabilities to acquire life and social development skills to facilitate their full and equal participation in education and in their communities. This includes facilitating the learning of Braille, sign language, and other means and formats of communication, as well as of orientation and mobility skills. In the case of the deaf community, the promotion of the linguistic identity is required. This provision is aimed at ensuring that persons facing communication barriers are not excluded from the general education system and that they receive instruction in the appropriate languages, modes and means of communication in environments which maximize their development, not only academic but also social.

23. In article 24, paragraph 4, it is indicated that for general education systems to be inclusive teachers who are qualified in sign language and/or Braille must be employed. Furthermore, professionals and staff who work at all levels of education must be trained in disability awareness and in the use of appropriate communication, educational techniques and materials.

²³ Schools are explicitly referred to in article 9, paragraph 1 (a).

24. Article 24, paragraph 5, refers to access to general tertiary education, vocational training, adult education and lifelong learning. In it, the right of persons with disabilities to access these opportunities without discrimination and on an equal basis with others is reaffirmed. This implies both a general accessibility requirement and the provision of reasonable accommodation.

25. The Committee on the Rights of Persons with Disabilities has called for States parties to guarantee and implement the right to inclusive education in its concluding observations.²⁴ The Committee has encouraged a gender approach in the implementation of article 24.²⁵ It has also recommended the inclusion in mainstream schools of Roma children,²⁶ persons of African descent,²⁷ indigenous people and those living in rural areas.²⁸ The Committee has on various occasions expressed an opinion on favouring mainstream schools over special schools.²⁹

III. The right to inclusive education of persons with disabilities

A. No-rejection clause

26. The right of persons with disabilities to receive education in mainstream schools is included in article 24, paragraph 2 (a), which states that no student can be rejected from general education on the basis of disability. As an anti-discrimination measure, the “no-rejection clause” has immediate effect and is reinforced by reasonable accommodation. It is advised that education laws explicitly state a “no-rejection clause”, forbidding the denial of admission into mainstream schools and guaranteeing continuity in education. Impairment-based assessment to assign schools should be discontinued and support needs for effective participation in mainstream schools assessed. For examples, New Brunswick, Canada, has a school policy that provides for non-rejection of students from mainstream education³⁰ by guaranteeing inclusive education.

27. The legal framework for education should require every measure possible to avoid exclusion. Some education systems establish specific mechanisms that have the effect of excluding students for instance by setting age limits on the completion of grades.

²⁴ See, for example, those on the initial reports of Argentina, CRPD/C/ARG/CO/1, and Spain, CRPD/C/ESP/CO/1.

²⁵ See, for example, the lists of issues on the initial reports of Austria, CRPD/C/AUT/Q/1, Argentina, CRPD/C/ARG/Q/1, China, CRPD/C/CHN/Q/1, and Peru, CRPD/C/PER/Q/1.

²⁶ See its concluding observations on the initial report of Hungary, CRPD/C/HUN/CO/1.

²⁷ See its concluding observations on the initial report of Peru, CRPD/C/PER/CO/1.

²⁸ See its concluding observations on the initial reports of Argentina, CRPD/C/ARG/CO/1, and Paraguay, CRPD/C/PRY/CO/1.

²⁹ See its concluding observations on the initial reports of Paraguay, CRPD/C/PRY/CO/1 (on reorienting segregated special education towards the inclusive model); Argentina, CRPD/C/ARG/CO/1 (on ensuring that pupils with disabilities who attend special schools are enrolled in inclusive schools); China, CRPD/C/CHN/CO/1 (on reallocating resources from the special education system to promote the inclusive education in mainstream schools); CRPD/C/AUS/CO/1 (expressing concern that students with disabilities continue to be placed in special schools and many of those who are in regular schools are largely confined to special classes or units).

³⁰ Canada, New Brunswick, Department of Education and Early Childhood Development, policy No. 322 on inclusive education: “6.2.2 The following practices must not occur: 1) Segregated, self-contained programs or classes for students with learning or behavioural challenges, either in school or in community-based learning opportunities. 2) Alternative education programs for students enrolled in kindergarten to grade eight”.

Legislation supporting these systems and those that openly exclude students from education on the basis of having an impairment should be amended.

B. Right to inclusive, quality and free education

28. An inclusive education system does not imply a lower quality of education; on the contrary, establishing quality education is at the core of the recommended measures. Quality education is related to the concept of acceptability (4 As), and UNESCO has recommended five dimensions to further advance this goal: respect for rights, equity, relevance, pertinence, and efficiency and efficacy.³¹

29. The human right to education brings to the fore the principles of free and obligatory primary education, and progressively free secondary and higher education accessible to all without discrimination. Non-discrimination can eliminate exclusion and expulsion in education by promoting participation in decision-making.

30. In the context of education, equity means that each student can benefit from the opportunities offered by the system. Education systems must therefore provide for substantive equality linked to outcomes. Equity needs to be ensured in access, process and results.

31. Education must be relevant, in accordance with the objectives ascribed to it by society, and must serve the purposes explicitly recognized in article 24, paragraph 1, of the Convention on the Rights of Persons with Disabilities. In highlighting the need for education to be relevant, UNESCO recommends the four pillars outlined in the Delors Report (learning to know, to do, to be and to live together).³²

32. Pertinent and meaningful education should allow for the development of autonomy, self-government and identity by adapting to the needs of the student. This implies moving away from homogeneity to the pedagogy of diversity.

33. Efficacy and efficiency are attributes of quality education. Education must be efficacious in translating the right to quality education into meaningful practice, and efficient in recognizing and honouring the efforts made by students, not only the results.

34. Inclusive education calls for inclusive testing methods. Cognitive learning is an indicator of quality education, but not the only one. Testing methods should be based on the proposed goals of education, taking into account the different dimensions that define quality education.

C. Accessibility and eradication of barriers

35. Ensuring accessibility is an overarching obligation for States parties to the Convention on the Rights of Persons with Disabilities, as detailed in article 9. Persons with disabilities often face barriers in physical access and communication, and owing to socioeconomic factors and attitudes. This in turn may have an adverse impact on their access to the physical environment, knowledge, educational material and information. Addressing and eliminating these barriers is a prerequisite to inclusive education.

³¹ Rosa Blanca et al., *Quality education for all: A human rights issue* (Santiago, UNESCO, 2007).

³² International Commission on Education for the Twenty-first Century, *Learning: the Treasure Within* (Paris, UNESCO, 1996), chap. 4.

36. Measures to eradicate physical and communication barriers have generally focused on the modification of infrastructure, the provision of accessible transportation and communication tools, as well as the promotion of universal design.

37. To respond to socioeconomic barriers, States may provide financial assistance or incentives for students with disabilities. It is important to note that free primary education for all implies that accessibility measures should also be free of charge. The Finnish Basic Education Act provides a good example of this, stating that a pupil with disability has, additionally, the right to free interpretation and assistance services in order to participate in education.

38. Barriers arising from the attitudes of teachers, fellow students and families can be considerable and are often difficult to surmount. It is important to note that, in Norway, for example, the Education Act recognizes that accessibility efforts shall apply to both the physical and the psychosocial environment. Measures to raise public awareness under article 8 of the Convention on the Rights of Persons with Disabilities can help overcome barriers of this nature.

39. The requirement to guarantee accessibility should be established by legislation and supported with adequate funding. In addition, schools may receive higher budget allocations per student for pupils with disabilities (e.g. in Mongolia it is three times higher) to cover expenses related to accessibility. There are good examples of interventions of different scales, from larger projects (the National “700 Schools” Programme in Argentina) to pilot projects, as in Georgia.³³ While the implementation of accessibility measures is often assigned to local administrations, standards need to be developed at the national level.³⁴

40. Accessibility means that adequate measures are taken so that all students can participate meaningfully. Accessibility should also inform the design of education policies. If respected, accessibility will progressively lead to more inclusive schools. Some school systems establish indicators to measure progress on the implementation of accessibility measures. These indicators should also cover challenges related to access to communication.

D. Reasonable accommodation in education

41. Reasonable accommodation as defined in the Convention on the Rights of Persons with Disabilities is an anti-discrimination measure to be realized with immediate effect.³⁵ The purpose of this measure is to ensure that a person with disability has access to education in the existing system on an equal basis with others. Denial of reasonable accommodation constitutes a violation of the Convention.

42. Inclusive education systems are designed to provide for a diverse constituency of students. However, even the most advanced inclusive education system may have gaps in its design because of the specific individual needs of students. In such an instance, an inclusive system would respond by reviewing its practice to determine whether the gaps

³³ Under a project to introduce inclusive education in 10 public schools in Tbilisi, 10 schools were made accessible between 2006 and 2008 in accordance with article 9 of the Convention on the Rights of Persons with Disabilities.

³⁴ See also article 9, paragraph 2 (a), of the Convention on the Rights of Persons with Disabilities on minimum standards and guidelines for accessibility.

³⁵ See, for example, Committee on the Rights of Persons with Disabilities, concluding observations on the initial report of Spain, CRPD/C/ESP/CO/1, para. 44.

might be addressed systemically or through a reasonable accommodation measure. A reasonable accommodation fund should be set up to address the gaps.

43. Reasonable accommodation is a common concept in certain legal systems. “Reasonableness” is understood as the result of an objective test that involves an analysis of the availability of resources, as well as the relevance of the accommodation, and the expected goal of countering discrimination. Such testing standards are yet to be developed in jurisprudence by the Committee on the Rights of Persons with Disabilities.

44. The Committee on Economic, Social and Cultural Rights issued guidance on the obligation to take steps towards the implementation of the International Covenant on Economic, Social and Cultural Rights to encompass the maximum availability of resources,³⁶ including for the right to education. This guidance on the “reasonableness” standard may be relevant for the Convention on the Rights of Persons with Disabilities until such time as the Committee on the Rights of Persons with Disabilities develops its own guidance for specific reasonable accommodation standards under the Convention. It is also advisable for States to engage in interparliamentary cooperation to progress with legislation and judicial guidance to directly apply the non-discrimination clause of reasonable accommodation. Examples of good practices can be found in countries such as: Australia, Canada, Ireland, Israel, New Zealand, the Philippines, South Africa, Spain, Sweden, the United Kingdom, the United States of America and Zimbabwe, as well as the European Union.³⁷

E. Support

45. The availability of adequate support is an essential feature of inclusive education. It is expressly referred to in article 24, paragraph (d) and (e), of the Convention on the Rights of Persons with Disabilities and is mentioned in other articles thereof. Adequate support is also complementary and connected to accessibility measures.

46. Support can be articulated in different ways, while always considering individual needs. Some education systems use the concept of Universal Design Learning in their inclusive policies to address both structural and individual support. This is the case in New Brunswick, Canada. However, integration systems can also use individualized plans. Individualized attention should be considered a central feature of inclusive education. The Finnish Basic Education Act is a case in point, granting the right to an individualized learning plan to all pupils who need regular support in learning.

47. The core element of individualized education plans is the involvement of professionals, parents and the student.³⁸ These plans aim at enabling each student to live, study and act autonomously, with adequate support, taking into account individual capacities. Headmasters in Belgium have called for a “support panel”, when needed, to

³⁶ Statement on an evaluation of the obligation to take steps to the “maximum of available resources” under an optional protocol to the Covenant, E/2008/22, annex VIII, pp. 146–147. The Committee said that the compliance with that obligation should be assessed by considering a number of elements, which may include the deliberate intention to fulfil economic, social and cultural rights by the measures taken, a non-discrimination approach in taking such measures and the time frame. Resource constraint should be looked through a careful analysis of the context.

³⁷ As noted in a background conference document for the Ad Hoc Committee on a Comprehensive and Integral International Convention on the Protection and Promotion of the Rights and Dignity of Persons with Disabilities prepared by the Department of Economic and Social Affairs on the concept of reasonable accommodation in selected national disability legislation.

³⁸ UNICEF, *The Right of Children with Disabilities to Education*, p. 70.

evaluate the individual situation before deciding on the support measures required. Individual plans should be regularly updated, based on achievable targets and expressed in clear language.

48. There may be numerous support measures based on individual education plans, ranging from the provision of compensatory aids, special learning aids, assistive and information technology and the application of special education procedures. One of the most important measures is the use of a learning support assistant, either shared or on a one-to-one basis, depending on the needs of the student. It is important to stress that this non-exhaustive list is a continuum of support measures reflected in article 24, paragraph 2 (d) and (e), of the Convention.

49. All of these measures should be sustained by adequate allocation of resources in the State budget. In Ireland, 15 per cent of the entire education budget is allocated to provide support in mainstream schools. Even when financial constraints have impeded full-fledged options, States have found creative solutions. In Guatemala, teams of itinerant pedagogical advisers visit mainstream schools to provide orientation and advice. The transformation of special schools into resource centres, as part of the process of moving from a segregated to inclusive education system, can be extremely useful in this regard.

F. Equalization of opportunities

50. Article 24, paragraph 3, of the Convention on the Rights of Persons with Disabilities refers to a series of measures necessary for persons with disabilities, and particularly certain groups of persons with disabilities, to participate in the education system and in society. States parties must facilitate access to Braille, other alternative scripts, augmentative and alternative modes, diverse means and formats of communication, orientation and mobility skills, peer support and mentoring, as well as the learning of sign language, and promotion of the linguistic identity of the deaf community. Chile and the Czech Republic have frameworks that allow for many of these measures, while Cuba and Norway provide for sign-language interpreters in regular schools.

51. In article 24, paragraph 3, it is also underlined that States must ensure appropriate languages and modes and means of communication for the individual and environments which maximize academic and social development for students. Current education systems must develop an inclusive approach to education to convert mainstream schools into suitable learning environments for all students, including students who are blind, deaf and deaf-blind. Enhanced inclusive measures must be adopted, promoting bilingual teaching, not only to provide for the integration of deaf students but also for the hearing-abled students so that they can be part of the inclusive process. “Environments which maximize academic and social development” should not be read as equating to segregated environments, but as an obligation on States to improve the process of inclusion into mainstream schools. Placing students in mainstream schools is not enough; adequate support is needed and effective participation too.³⁹ For example, deaf students must have access to signing communities to communicate properly. All students in mainstream schools should have access to sign-language education to improve inclusion of the deaf community. At the same time, students with visual or other impairments require accessibility measures and support appropriate to their needs.

³⁹ Hilde Hualand and Colin Allen, *Deaf People and Human Rights* (World Federation of the Deaf, 2009). Available from www.wfdeaf.org/wp-content/uploads/2011/06/Deaf-People-and-Human-Rights-Report.pdf.

G. Professional training and capacity-building

52. Teachers are an important resource in establishing an inclusive education system. In article 24, paragraph 4, the need to train teachers to be supportive of students with disabilities and an active resource for quality education is highlighted. Integrative education systems have already started to provide a framework for integration training with a focus on inclusion. Australia and Cuba have training programmes in place to facilitate the access of students with disabilities in school.

53. Pre-service training on the inclusive approach to education is fundamental to prepare new teachers for teaching a diverse group of students and to use diversity as an opportunity to teach and learn. In-service training is not only necessary to provide for the requirements of students who are (or could be) in the school system but also for the positive transformation of the system. France and Colombia provide for such pre-service and in-service training to teachers.

54. Teaching barriers need to be properly addressed. Support should be provided to teachers to teach all students, including those with disabilities. Training on instructional strategies to manage courses with students from different backgrounds and characteristics should be made available. Teachers should be able to reflect on their experiences and practices to enable them to review their methodologies and course designs for enhanced inclusion.

H. Lifelong learning

55. Lifelong learning is an element for ensuring the right to education. In article 24, paragraph 5, contains a call for tertiary and adult education, vocational training and lifelong education on equal terms with others. This provision is important as it highlights the need for higher education to respond in an age-appropriate manner to the educational needs of students. This provision underscores that persons with disabilities cannot be restricted in their progress with regard to their right to education on the basis of the medical diagnosis of an impairment. To reinforce this provision, the obligation to provide reasonable accommodation to guarantee this right is reiterated elsewhere in the Convention.

IV. National implementation

56. Inclusive education systems are the result of complex processes that need to be addressed systemically. A systemic transformation of the education system should include: (a) adopting an inclusive education law with a clear definition of inclusive education, including a “no-rejection” clause providing for non-discrimination, and reasonable accommodation; and (b) creating a transformation plan in order to generate the necessary conditions for inclusiveness to be realized. Barriers at the legal and policy levels must be addressed as a first step. The innovative character of the human rights-based approach to disability and the inclusive approach to education needs to be promoted as education systems invest in practices contributing to the development of inclusive education systems.

57. The process of drafting an inclusive education law can be enriching, especially when it is participatory. It is advisable to create partnerships between all relevant actors to formulate the design, and facilitate the implementation of, an inclusive education system. To ensure the participation of those who have little information on the human rights approach to education, capacity-building should be undertaken.

58. Centralization of education under the ministry of education is worthwhile. The transformation process to inclusive education needs central coordination to maximize

existing resources, adapt rules and procedures, and ensure that the role of relevant ministries is compliant with a rights-based approach, rather than charity or medical-based approaches. Centralization does not exclude local jurisdictions, as their involvement provides for better participation for those directly affected, as required in article 4, paragraph 3, of the Convention.

59. Some systems provide for differential budgets for mainstream schools and special schools. Merging budgets under one inclusive strategy is a useful tool to accompany the move towards an inclusive education system. Serious political will and authority is needed to overcome institutional resistance to such change.

60. The transformation of special schools into resource centres for inclusion is important. Some integration systems already have this measure enshrined in their legislation. In Chile, Norway and Spain, special education resources can support mainstream schools in the integration process. Georgia and Costa Rica have projects to provide integration services with a view to moving towards inclusion. It is desirable that resource centres are a part of an inclusive framework under the control of the ministry of education.

61. The best way to learn how to include is by including. Students with disabilities should be transferred into mainstream schools to enhance the understanding that inclusive education systems need, and should be a key part of, a transformation plan. Belgium and Georgia have progressively implemented transfer programmes into general education for students with disabilities.

62. Implementation requires both measurable goals with a human rights focus and adequate data collection processes. In order to measure progress on the full realization of the right to inclusive education, developing monitoring frameworks with structural, process and outcome indicators, and specific benchmarks and targets for each indicator is advisable.⁴⁰ Structural indicators should measure barriers to inclusive education and not be limited merely to collecting data disaggregated by impairment.⁴¹ Process indicators allow for a better grasp of the progress of the transformation, including by measuring the number of teachers trained on inclusive instructional strategies, the number of accessible schools and the number of students with disabilities transferred from special schools to regular schools. Outcome indicators should also be established. These may include: the percentage of students with disabilities in mainstream schools that started basic education and obtained their final certification, and the percentage of students admitted to secondary education. The quality of education should also be measured in the light of the different elements mentioned in paragraph 28 above. It is furthermore advisable to measure affirmative measures, such as quotas or incentives.

63. Remedies and reparation in cases of violations are important components of the national implementation process. Relevant laws should include effective remedies or other adequate complaints procedures. The Flemish Parliament laws on primary and secondary education foresee mediation when admission in mainstream schools is denied, allowing for appeals if the mediation fails. Ultimately, sanctions could be applied. Belgian anti-discrimination law includes criminal sanctions for intentional refusal of reasonable accommodation, which is mandatory in the area of education. A prerequisite for seeking a remedy or reparations constitutes the full implementation of article 13 of the Convention on the Rights of Persons with Disabilities on access to justice. States that are not yet part of the

⁴⁰ See OHCHR, *Human Rights Indicators: A guide to measurement and implementation* (New York and Geneva, 2012)

⁴¹ Portugal, for example, has established inclusive structural indicators.

Optional Protocol to the Convention should consider ratifying it, to allow for the possibility of individual communications.

64. The monitoring and implementing system of article 33 of the Convention is a fundamental resource in advancing the agenda on inclusive education. National human rights institutions and mechanisms designated to monitor the Convention have collected data on the denial to mainstream education, produced studies and surveys on exclusions and barriers, promoted quality education and recommended legislative and policy reforms.⁴² Civil society groups, including organizations of persons with disabilities, have been effective in influencing a move towards inclusive education.⁴³ The role of civil society is crucial in implementation, including international monitoring, such as reporting the situation in China,⁴⁴ promoting regulatory flexibility as in Buenos Aires,⁴⁵ contributing to policy design as in Lao People's Democratic Republic,⁴⁶ campaigning for inclusion⁴⁷ or sign-language teaching.

V. International cooperation

65. The Convention on the Rights of Persons with Disabilities includes a stand-alone article on the role of international cooperation (art. 32) in realizing the rights of persons with disabilities.⁴⁸ The contributions of States to the present report offer a number of examples where international cooperation has been effective in supporting the change to inclusive education systems. In Georgia, the first inclusive education project implemented by the Ministry of Education and Sciences was funded by the Norwegian Ministry of Education and Research. The Government of Denmark supported the introduction of new methods of teaching in some schools of Nepal, which allowed children with sensory and intellectual impairments to be integrated into mainstream education. In Cambodia, funds channelled through a national non-governmental organization supported the teaching of Braille and sign language in 150 public schools, the translation of the school curriculum into Braille and sign language, and provided financial support to Braille and sign-language teachers in mainstream schools.

66. Inclusive education is one of the areas of cooperation funded through the United Nations Partnership to Promote the Rights of Persons with Disabilities. In the Republic of Moldova, the aim is to support the Government's 2011 national programme of inclusive education and the focus on improving access of persons with disabilities to mainstream education and targeted services. Steps have already been taken towards creating psychopedagogical assistance services to support the inclusive education of children with disabilities, the training of relevant personnel (teachers, inspectors, local representatives) on

⁴² See contributions from the Ombudsperson's Offices of Buenos Aires, Azerbaijan, the Plurinational State of Bolivia and Colombia, the National Human Rights Commission in Rwanda, and the Parliamentary Ombudsman in Finland.

⁴³ Human Rights Watch, "Signs for Good Education", video, 2013. Available from <http://deafnewstoday.blogspot.fr/2013/10/signs-for-good-education.html>.

⁴⁴ Human Rights Watch, "As long as they let us stay in class": *Barriers to education for persons with disabilities in China* (United States, 2013).

⁴⁵ Grupo 24 obtained regulatory reforms in Buenos Aires on support in public schools for children with disabilities and ensuring the continuity of the school trajectory in mainstream private schools.

⁴⁶ The Laos Association of the Blind's contribution to the National Strategy and Action Plan on Inclusive Education 2011–2015.

⁴⁷ The 2013 "No excuses" campaign of the Canadian Association for Community Living.

⁴⁸ For more details, see the thematic study by OHCHR on the role of international cooperation in support of national efforts for the realization of the rights of persons with disabilities, A/HRC/16/38.

their roles and responsibilities in providing quality education services for children with disabilities, the improvement of data collection and the amendment of domestic legislation and regulations in conformity with the provisions of the Convention. The Government of Japan also allocated 2.86 million United States dollars to support inclusive education in the Republic of Moldova by addressing school infrastructure needs and adequate teacher training.

67. The outcome document of the 2013 General Assembly's High-level Meeting on Disability and Development (General Assembly resolution 68/3), which reaffirmed the international community's commitment to advance the rights of all persons with disabilities and work together for a disability-inclusive development agenda, also embraced inclusive education as one of the priorities for the post-2015 agenda (para. 4 (d)).

VI. Conclusions and recommendations

68. **Inclusive education is essential to achieving universality of the right to education, including for persons with disabilities. Only inclusive education systems can provide both quality of education and social development for persons with disabilities. Inclusive education implies more than placing students with disabilities in mainstream schools; it means making them feel welcome, respected and valued. Inclusive education is built on values that enhance a person's ability to achieve their goals and embrace diversity as an opportunity to learn. Students with disabilities need adequate support to participate on equal terms with others in the education system. Mainstream schools must provide for an environment that maximizes academic and social development.**

69. **Persons with disabilities face various forms of discrimination in educational settings. The most serious barriers to participation in schools arise from prejudice and misconceptions that lead to deliberate exclusion and segregation. Students with disabilities are stigmatized as people who cannot be educated in regular schools, or at all. This results in education systems in which persons with disabilities are denied the right to education as enshrined in article 24 of the Convention on the Rights of Persons with Disabilities.**

70. **The Convention provides for two-pronged implementation of that right: firstly, non-discrimination in mainstream schools for students with disabilities, reinforcing this right with reasonable accommodation; secondly, a systemic change that requires progressive realization and a transformation plan to counter exclusion and segregation. Meaningful implementation is based upon a complex change process that requires a transformation of the existing legislative and policy framework and the full involvement of all relevant stakeholders, particularly persons with disabilities and their representative organizations.**

71. **Through inclusive education laws, States should establish an inclusive education system under the aegis of their respective ministries of education that prohibits rejection from mainstream schools on the basis of disability and provides for reasonable accommodation. A transformation plan should provide the framework for the implementation of an inclusive education system with measurable goals. States should put in place training programmes for teachers, create reasonable accommodation funds, provide for accessible materials, promote inclusive environments, improve testing methods, promote the transfer from special schools to mainstream schools, promote monitoring through indicators on inclusive education, provide adequate support to students, and use appropriate communication means and formats. Schools need to be properly funded, while at the same time availability of**

resources should not be a basis for denying access to the right to education for a student with disability.

72. Integration has provided a wealth of good practices that could constitute a starting point for developing inclusive education systems. International cooperation has contributed to this process. The recognition of inclusive education systems as a priority in the High-level Meeting on Disability and Development can contribute to further strengthening the process through the adoption of an inclusive education goal with adequate targets and indicators for the post-2015 development agenda.
