

Advancing inclusive education policies: the vital role of human rights

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Abstract

Purpose: Across the world and particularly in Europe a number of students-learners, including students-learners with disabilities, Roma students- learners, students- learners with a migrant-refugee background, encounter an increased level of vulnerability within society and multiple barriers to the full enjoyment of their rights, including their right to education with long-lasting effects on their life course.

Methods: The paper is based on a systematic legal analysis of international and regional human rights regimes, literature research and document analysis, towards identifying the framework of policies and strategies required for upholding the right of all students-learners to inclusive education and advancing equal education opportunities for all without discrimination. The literature-scientific research included publicly available documents, reports (e.g., World Report on Disability), peer-reviewed studies and other publications primarily of human rights bodies at the United Nations level (e.g., the United Nations Committee on Economic, Social and Cultural Rights, the United Nations Committee on the Rights of Persons with Disabilities, and the United Nations Committee on the Rights of the Child). These sources are published in English. They tend to provide useful interpretation material for the role of inclusive education towards promoting equal education opportunities for all students-learners. Notably, these sources further clarify the meaning and process of inclusive education by employing a rights-based approach.

Results: Within this context, this paper argues that a greater focus on the establishment of inclusive education environments is required for providing quality education to all students-learners without discrimination and on the basis of equality of opportunity.

Implications: To this end, a human rights-based approach to inclusive education can assist marginalised and disadvantaged students-learners in catalyzing their claims for the realization of their right to education, while guiding and intensifying state action to this end.

Keywords: Children, Human Rights, Inclusive Education, Learners, Participation, Vulnerability

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1 INTRODUCTION

Across the world and particularly in Europe a number of students-learners, including students- learners with disabilities, Roma students- learners, students- learners with a migrant- refugee background, are often being confronted with an increased level of vulnerability concerning their prospects for enjoyment of their right to education, involving school segregation (Council of Europe Commissioner for Human Rights, 2017; World Bank and UNHCR, 2021). Essentially, students- learners in vulnerable situations are at high risk of social exclusion in that they often face multiple and disproportionate barriers to the full enjoyment of their

rights including their right to education, and to their inclusion in society (see, e.g., Rutigliano, 2020; UNICEF, 2012; World Health Organization and World Bank, 2011). Critically, many students- learners with disabilities encounter significant vulnerabilities and severe disability-based discrimination when trying to access education at every level of the education system (such as segregation, harassment and bullying), thereby facing exclusion from mainstream education opportunities with adverse effects on their life course (such as, reduced employment opportunities etc.) (World Health Organization and World Bank, 2011; Broderick and Ferri, 2019; UNESCO, 2021). In a similar vein, it is argued that access to education for refugee children is still far lower than for those not forced into displacement.

Evidence indicates that 77 percent of refugee children attend primary school, while merely a 31 percent of refugee youth accesses secondary education and only a 3 percent accesses tertiary opportunities (World Bank and UNHCR, 2021: 14). In addition, evidence highlights that early dropouts and low enrolment in secondary education remain a persistent and a common issue for Roma students (Rutigliano, 2020). Thereto, such disturbing trends, which become even more apparent and are further exacerbated in crisis times - in political, social, economic, environmental, and health crises - largely uncover that the right to education of students-learners in vulnerable situations is being widely deprived (see, e.g., UNICEF, 2012; World Bank and UNHCR, 2021). Within this context, the design, development and implementation of inclusive education policies should take into account and contain targeted interventions that respond to the diverse needs of students-learners who are especially vulnerable and address the obstacles that confront their ability to effectively enjoy their right to education. Hence, the purpose of this paper is to examine the vital role of human rights towards framing more inclusive education policies. The findings from this paper can contribute to the field of promotion of diversity in education settings and particularly of intercultural and inclusive education, while addressing pressing challenges linked to the right to education of all students- learners, especially those in vulnerable situations.

2 RESEARCH METHODS

The paper is based on a systematic legal analysis of international and regional human rights regimes, literature research and document analysis, towards identifying the framework of policies and strategies required for upholding the right of all students-learners to inclusive education and advancing equal education opportunities for all without discrimination. The literature-scientific research included publicly available documents, reports (e.g., World Report on Disability), peer-reviewed studies and other publications primarily of human rights bodies at the United Nations level (e.g., the United Nations Committee on Economic, Social and Cultural Rights, the United Nations Committee on the Rights of Persons with Disabilities, and the United Nations Committee on the Rights of the Child). These sources are published in English. They tend to provide useful interpretation material for the role of inclusive education towards promoting equal education opportunities for all students-learners. Notably, these sources further clarify the meaning and process of inclusive education by employing a rights-based approach.

3 RESULTS AND DISCUSSION

A. INCLUSIVE EDUCATION: SETTING THE SCENE: In terms of elucidating the meaning of inclusive education, the United Nations Educational, Scientific and Cultural Organization (UNESCO) in its policy guidelines acknowledges inclusion in education as a process of addressing the diverse needs of all children ‘through increasing participation in learning, cultures and

communities, and reducing exclusion within and from education. It involves changes and modifications in content, approaches, structures and strategies, with a common vision which covers all children of the appropriate age range and a conviction that it is the responsibility of the regular system to educate all children’ (UNESCO, 2009: 8-9). In parallel, in 2015 the value of inclusive education was underscored in the UN General Assembly’s 2030 Agenda for Sustainable Development and specifically in the Sustainable Development Goal 4 where explicit emphasis was placed on States’ obligation to ‘ensure inclusive and equitable quality education and promote lifelong learning opportunities for all’ (United Nations General Assembly, 2015).

Nevertheless, in practice access to education for students-learners in vulnerable situations as well as several school desegregation strategies and efforts are adversely affected due to: (i) financial and legal barriers to entry, (ii) an ill-fitting curriculum; (iii) the persistent discrimination against vulnerable communities (e.g., Roma communities, migrants-refugees), teachers’ negative attitudes that inclusion of students-learners in vulnerable situations will negatively affect the quality of education in combination with the lack of good institutional foundations at the local and national level; (iv) the lack of trained and rights sensitive personnel-teachers associated with the lack of knowledge about the value of inclusive and intercultural education for all; (v) the non-existence of administrative measures as regards to segregation at school and school inspectorate level; (vi) the lack of disaggregated data necessary for program development and implementation of effective desegregation policies and interventions to promote inclusive and intercultural education; (vii) the lack of appropriate and continuous funding for advancing inclusion of marginalized students- learners (e.g., inadequate investment in refugee education), often associated with the lack of genuine political will (FXB Center for Health and Human Rights, 2015; Rutigliano, 2020: 26; World Bank and UNHCR 2021: 14).

In fact, within the disability context, in the General Comment No. 4 the United Nations Committee on the Rights of Persons with Disabilities, the oversight body for the implementation of the United Nations Convention on the Rights of Persons with Disabilities, set out the parameters that affect access to inclusive education for persons with disabilities. Particularly, the Committee noted that the barriers to inclusive education for persons with disabilities can be attributed, inter alia, to: (i) the failure to acknowledge or implement the human rights model of disability; (ii) the continuous discrimination against persons with disabilities; (iii) the lack of knowledge about the nature and advantages of inclusive and quality education, and diversity in learning for all; (iv) the lack of outreach to all parents combined with the lack of appropriate responses to support requirements, leading to misplaced fears, and stereotypes, that inclusion will cause a deterioration in the quality of education, or otherwise impact negatively on others; (v) the lack of disaggregated data and research, necessary for accountability and program development, impeding the implementation of effective policies and interventions to foster inclusive and quality education; (vi) the lack of political will combined with the lack of technical knowledge, and capacity in implementing the right to inclusive education including insufficient education of all

teaching staff; (vii) the inappropriate and inadequate funding mechanisms to provide incentives and reasonable accommodations for inclusion of students-learners with disabilities, inter-ministerial coordination, support and sustainability; (viii) the lack of legal remedies and mechanisms to claim redress for violations of the right to inclusive education (United Nations Committee on the Rights of Persons with Disabilities, 2016: para. 4).

B. INCLUSIVE EDUCATION: HUMAN RIGHTS FRAMEWORK: Against this backdrop, the Universal Declaration of Human Rights (1948) in Article 26 acknowledges everyone's right to education, which involves the right to free and compulsory elementary education and to equal access to higher education as well as a prior right of parents to choose the kind of education that shall be given to their children. Hence, it is plausible to discern the existence of a combination of claims, requiring both non-interference and positive state action in the realization of the right to education, while comprising two aspects of the right to education, the 'freedom' and the 'social' aspect (Nowak, 2001; De Beco, 2022). Importantly, the International Covenant on Economic, Social and Cultural Rights (ICESCR, 1966) elaborated further the content of the right to education by way of standard-setting. Particularly, ICESCR stresses in Article 13, read in conjunction with Article 14, the right of everyone to education and lays down a number of specific state obligations to develop affirmative action relating to primary, secondary and higher education, underscoring at the same time the principle of equal access to education. Within this context the United Nations Committee on Economic, Social and Cultural Rights (1999: para.6), the oversight body for the ICESCR, has particularly underlined that education must be, *inter alia*, accessible to all without discrimination, acceptable and responsive to the needs of students within their diverse cultural and social settings. Equally important, the United Nations Convention on the Rights of the Child (CRC, 1989) under Article 28 enshrines the right to education of every child on the basis of equal opportunity, while in Article 29 it recognizes the aims and objectives of education in terms of promoting the fullest possible development of the child's personality. These CRC provisions constitute an overarching legal basis given their value and interrelation to other substantive rights and principles stipulated in CRC, including the non-discrimination principle (Article 2), the child's best-interests principle (Article 3), the right to life, survival and development (Article 6), the right to express views and have them taken into account (Article 12). Notably, the United Nations Committee on the Rights of the Child (2001: para. 11), the body responsible for overseeing states' compliance with the CRC, in a General Comment on the aims of education acknowledges education that promotes respect for differences while at the same time challenging all aspects of discrimination and prejudice as a reliable and enduring antidote to ignorance, unfounded fears of racial, ethnic or other forms of difference, the exploitation of prejudices and the teaching of distorted values. Furthermore, the UNESCO Convention against Discrimination in Education (1960) declares everyone's right to education without discrimination and on the basis of equality of opportunity. Notably, Article 2 of the Protocol 1 to the Convention for the Protection of

Human Rights and Fundamental Freedoms (1952) stresses that 'no person shall be denied the right to education' while requiring States to 'respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions'.

Meanwhile, in the disability context, it is noteworthy that the Standard Rules on the Equalization of Opportunities for Persons with Disabilities (1993) provide in Rule 6 that States should acknowledge the principle of equal primary, secondary and tertiary educational opportunities for children, youth and adults with disabilities in integrated settings as well as ensure that the education of persons with disabilities constitutes an integral part of the education system (United Nations General Assembly, 1994: 15). Notwithstanding, Article 24 of the United Nations Convention on the Rights of Persons with Disabilities (CRPD, 2006) represents the most detailed provision in international law in terms of clarifying the aims and objectives of the right to inclusive education. In particular, the CRPD recognizes in Article 24(1) the right of persons with disabilities to education without discrimination and on the basis of equal opportunity to be realized through an inclusive education system at all levels. Most notably, CRPD constitutes the first legally binding instrument that stipulates the notion of quality inclusive education (United Nations Committee on the Rights of Persons with Disabilities, 2016). In fact, Article 24(1) CRPD addresses the aims and objectives of inclusive education by mandating States parties to ensure an inclusive education system at all levels and lifelong learning directed to: (i) the full development of human potential and sense of dignity and self-worth, and the strengthening of respect for human rights, fundamental freedoms and human diversity; (ii) the development by persons with disabilities of their personality, talents and creativity, as well as their mental and physical abilities, to their fullest potential; and (iii) enabling persons with disabilities to participate effectively in a free society. Additionally, Article 24(2) (b) CRPD mandates States to ensure 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. Article 24 CRPD constitutes a significant provision given its contribution and interrelation to other substantive rights and principles enshrined in CRPD, involving accessibility (Article 9 CRPD) and equality and non-discrimination (Article 5 CRPD). In fact, this state obligation under Article 24(2) (b) CRPD should be read in conjunction with Article 9(1) (a) CRPD which requires States, *inter alia*, to take appropriate measures to make schools accessible to persons with disabilities.

Furthermore, in accordance with the interpretation of the United Nations Committee on Economic, Social and Cultural Rights in its General Comment No.13 on the right to education, the United Nations Committee on the Rights of Persons with Disabilities has explicitly underlined that an inclusive education system must consist of four interrelated and essential elements, namely availability, accessibility, acceptability and adaptability (collectively called as the 4As) (UN Committee on the Rights of Persons with Disabilities, 2016). In terms of availability, the United Nations Committee on the Rights of Persons with Disabilities has noted that public and private educational institutions and programmes

must be available in sufficient quantity and quality. To this end, the Committee required States parties to guarantee a broad availability of educational places for learners with disabilities at all levels throughout the community (United Nations Committee on the Rights of Persons with Disabilities, 2016: para. 20). As regards to accessibility, the Committee has stressed that accessibility has four overlapping dimensions: non-discrimination, physical and information accessibility and affordability. Accessibility represents a significant parameter to inclusive education as it involves access to education without discrimination by requiring the environment of students with disabilities to be designed in such a way to foster inclusion as well as to guarantee their equality throughout their education; physical and information accessibility which requires the entire education system to be accessible, namely within safe physical reach (e.g., safe, secure and accessible public transport etc.), accessibly built environment including schools and all other places of education (e.g., existence of ramps, lifts in education facilities etc.) and/or accessible via information communication technology, including information and communication, comprising ambient or frequency modulation assistive systems, curriculum, education materials, teaching methods, assessment and language and support services; and affordability which requires education at all levels to be affordable for students with disabilities and reasonable accommodation not to entail additional costs for learners with disabilities (United Nations Committee on the Rights of Persons with Disabilities, 2016: paras. 21-23 and 26). In relation to accessibility, the Committee argued that accessibility constitutes a prerequisite for the full and equal participation of persons with disabilities in society (United Nations Committee on the Rights of Persons with Disabilities, 2016: para. 47). Additionally, with the context of acceptability, the Committee has underscored that it encompasses the obligation to design and implement all education-related facilities, goods and services with due consideration and respect for the requirements, cultures, views and languages of persons with disabilities. Thereto, States parties are required to adopt affirmative action measures to ensure that education is of good quality for all (United Nations Committee on the Rights of Persons with Disabilities, 2016: para. 24). Finally, adaptability is also a crucial parameter in the development of inclusive education practices. The Committee has explained that each student learns in a unique manner and as such it is essential to create adaptable learning environments and develop instruction to meet the diverse needs of all learners (United Nations Committee on the Rights of Persons with Disabilities, 2016: para. 25). Evidently, the 4As approach of the Committee to inclusive education requires that equality and non-discrimination principles, well-embedded in Article 5 CRPD and further elaborated by the United Nations Committee on the Rights of Persons with Disabilities in its General Comment No. 6 on equality and discrimination (2018), should become integral elements of inclusive education practices, thereby contributing to accessible education facilities and ultimately to equal opportunities for children with disabilities.

In virtue of the aforementioned key provisions of human rights standards that lay down an overarching framework for

action it is plausible to discern that inclusiveness in education represents a human rights imperative. Employing inclusive education practices from a human rights perspective can enable decision-makers in the education domain to effectively and timely identify, assess and respond to existing and potential challenges to the benefit of all students-learners. Essentially, the human rights framework provides valuable guidance for establishing a concrete regulatory framework towards the design and development of an inclusive education environment to the benefit of all students-learners and the society at large.

4 LOOKING FORWARD

Crucially, on the basis of the preceding analysis it must be conceded that without a human rights approach to inclusive education, students-learners in vulnerable situations (such as, students with disabilities, Roma students, students with a migrant background) will remain at risk of marginalization in education settings by facing considerable obstacles in accessing quality education on an equal basis with others. Essentially, the general educational system should be framed in conformity with the human rights standards, such as non-discrimination, equality, and respect for differences. This also requires the active participation of the intended beneficiaries in the decision-making processes so as the specific needs and concerns of students-learners in vulnerable situations become an integral part of the design and implementation of educational policies combined with continuous vigilance and enforcement on the part of the States.

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