

Module CHILDREN WITH SPECIAL NEEDS IN EDUCATION AND THE LAW ON INCLUSIVE EDUCATION

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Introduction - Description of the Module

Education is a human right for every child and it should be provided for the child’s development and learning. “Special needs education” is not a separate part of general education. The concept of “special needs” refers to the idea that general social practices (education particularly) should be sensitive to individual differences. Education should take into account a variety of abilities and aptitudes of pupils and be adapted to special needs and disabilities of students if and when necessary. Educational environment should be organized

in a way which will not exclude anyone. These ideas are implied in the concept of inclusive education.

This module introduces the basic legal concepts concerning education of children with special needs and disabilities: the principle and the right to inclusive education, non-discrimination and reasonable accommodation. It implies that a part of teachers' equipment is understanding of differences and adapting education according to special needs of students along with knowledge of law on inclusive education.

Objectives and Contents

- To introduce basic legal concepts of special needs education
- To get acquainted with international and national legal framework on inclusive education
- To identify opportunities to integrate the knowledge on the right to inclusive education into everyday education practices

Chapter I - Conceptual ideas and basic terminology: what are “inclusive education”, “disability” and “special needs”

1. Inclusive education

The concept of inclusive education refers to the fundamental idea that all children should study together and the right to education is the right for all children irrespectively of their background, nationality; social status; state of health and personal differences. As one of the basic human values education must be beneficial for the development of all children. The concept of *Inclusive education* underlines that education must be provided on an equal basis for everyone without discrimination. It implies, in particular, that children with disabilities shall study together with their peers and not be excluded or separated on the mere grounds of having disability or special needs.

The Committee on the Rights of the Child notes:

... the term inclusive may have different meanings. At its core, inclusive education is a set of values, principles and practices that seeks meaningful, effective, and quality education for all students, that does justice to the diversity of learning conditions and requirements not only of children with disabilities, but for all students.¹

Inclusion does not happen itself if children with different learning needs will study in the same classroom. Inclusion is about accommodating differences, adapting learning environment and teaching methods so as to respond to individual needs, aptitudes and capabilities of all students. Education can become inclusive if and when schools and education authorities take active and effective measures to identify and eliminate barriers in access to buildings, school curricula, attitudinal and other barriers in access to quality education.

The Committee on the Rights of Persons with Disabilities points out different dimensions of the right to inclusive education:

¹ Committee on the Rights of the Child, general comment No. 9 (2006), CRC/C/GC/9, para 67

Inclusive education is to be understood as:

(a) A fundamental human right of all learners. Notably, education is the right of the individual learner and not, in the case of children, the right of a parent or caregiver. Parental responsibilities in this regard are subordinate to the rights of the child;

(b) A principle that values the well-being of all students, respects their inherent dignity and autonomy, and acknowledges individuals' requirements and their ability to effectively be included in and contribute to society;

(c) A means of realizing other human rights. It is the primary means by which persons with disabilities can lift themselves out of poverty, obtain the means to participate fully in their communities and be safeguarded from exploitation.² It is also the primary means of achieving inclusive societies;

(d) The result of a process of continuing and proactive commitment to eliminating barriers impeding the right to education, together with changes to culture, policy and practice of regular schools to accommodate and effectively include all students.³

1.1 Inclusion and human rights

The concept of inclusive education is based on the idea that special measures of support for children with special needs and disabilities are not a charity or an expression of human compassion but a matter of human rights.

Rights-based approach implies that as every person has the right to education and there must be equal opportunities for everyone to access education and benefit from it.

Article 13 (1) of the UN Covenant on economic, social and cultural rights states that

The States Parties to the present Covenant recognize the right of everyone to education. They agree that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms.

The right to education is a universal human right; it is the right for everyone without exclusion. Receiving and completing quality education is a necessary prerequisite to enjoy other human rights and opportunities, such as labor rights and professional development, political and social participation, independent living and personal choices in life.

Stipulating the right of everyone to education the Covenant imposes on States Parties an obligation to take active measures to fulfil, provide and protect the human right.

² Committee on Economic, Social and Cultural Rights, general comment No. 13 (1999) on the right to education

³ Committee on the Rights of Persons with Disabilities, general comment No. 4 (2016), CRPD/C/GC/4, para 10

The obligation to fulfill (facilitate) implies the requirement to take action in order to guarantee the enjoyment of the right to education especially in cases when an individual or a social group cannot realize the right themselves due to actual circumstances beyond their control.⁴

With regard to the right to education for persons with disabilities the Committee on economic, social and cultural rights indicated such obligations of States Parties to the Covenant as: the provision of teachers training in order to educate children with disabilities in integrated settings in regular schools, and availability of the necessary equipment and support.⁵

“Historically viewed as welfare recipients, persons with disabilities are now recognized under international law as rights holders with a claim to the right to education without discrimination and on the basis of equal opportunities.”⁶

Inclusive education is a firm basis for exercise of other human rights.

1.2 Inclusion and social participation

Persons with disabilities and special needs more often than persons without such needs and disabilities face barriers in access to education. Many of those barriers are socially constructed and rooted deeply in prejudices, stereotypes and negative attitudes inherited from the past.

Relationships matter every bit as much as rights. Citizenship means having rights, but it also means belonging. Belonging in schools and universities, in places of work and places of worship, in politics, art and commerce; belonging in family, community and nation. Our rights as equal citizens, arguably, should get us in the front door. But once we inside, our citizen’s place of belonging assures us (or ought to) that we will be valued and heard. (Catherine Frazee)⁷

Quality education is a necessary prerequisite for full participation in the community. On the contrary, a lack of education restricts access to meaningful social participation.

For example, in the past children with mental disabilities and severe physical disabilities were often assessed “uneducable” and those assessments made education inaccessible for them. Many of children with disabilities in the past lived in institutions apart from their local communities and families.

Article 13 (1) of the Covenant on Economic, Social and Cultural Rights further states that

education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups, and further the activities of the United Nations for the maintenance of peace.

⁴ Committee on economic, social and cultural rights. General Comment No. 13: the Rights to Education (Art. 13), E/C.12/1999/10, para 47

⁵ E/1995/22(SUPP), para 35

⁶ Committee on the Rights of Persons with Disabilities. General Comment No. 4 (2016) on the right to inclusive education, CRPD/C/GC/4, para 1

⁷ Frazee, Catherine, “Toward Robust Citizenship”. Quoted in Sheppard, Colleen. Inclusive equality: the relational dimensions of systemic discrimination in Canada. McGill-Queen’s University Press, 2010. P. 136

Inclusion implies that every person shares social human values and contributes to the life of the community and society in general. Participation shall be not formal but essential and meaningful.

*If the right to education for all is to become a reality, we must ensure that all learners have access to quality education that meets basic learning needs and enriches lives... Education is not simply about making schools available for those who are already able to access them. It is about being proactive in identifying the barriers and obstacles learners encounter in attempting to access opportunities for quality education, as well as in removing those barriers and obstacles that lead to exclusion.*⁸

States Parties obligations according to the UN human rights documents are supported by the political will to make positive changes and “build peaceful, just and inclusive societies”.⁹ One of the Sustainable Development Goals adopted by world leaders at the UN Summit is to ensure inclusive and quality education for all and promote lifelong learning. Governments are expected to take measures to achieve these goals and follow-up their implementation.¹⁰

UNESCO emphasizes that the four key elements of conceptualizing inclusion are as follows

- *Inclusion is a process.* That is to say, inclusion has to be seen as a never-ending search to find better ways of responding to diversity. It is about learning how to live with difference and learning how to learn from difference. In this way differences come to be seen more positively as a stimulus for fostering learning, amongst children and adults.

- *Inclusion is concerned with the identification and removal of barriers.* Consequently, it involves collecting, collating and evaluating information from a wide variety of sources in order to plan for improvements in policy and practice. It is about using evidence of various kinds to stimulate creativity and problem-solving.

- *Inclusion is about the presence, participation and achievement of all students.* Here “presence” is concerned with where children are educated, and how reliably and punctually they attend; “participation” relates to the quality of their experiences whilst they are there and, therefore, must incorporate the views of the learners themselves; and “achievement” is about the outcomes of learning across the curriculum, not merely test or examination results.

- *Inclusion involves a particular emphasis on those groups of learners who may be at risk of marginalization, exclusion or underachievement.* This indicates the moral responsibility to ensure that those groups that are statistically most “at risk” are carefully monitored, and that, where necessary, steps are taken to ensure their presence, participation and achievement in the education system.¹¹

1.3 Notes on terminology

⁸ UNESCO, <http://www.unesco.org/new/en/education/themes/strengthening-education-systems/inclusive-education/>)

⁹ Resolution adopted by the UN General Assembly on 25 September 2015 “Transforming our world: the 2030 Agenda for Sustainable Development», A/RES/70/1 para 3

¹⁰ <http://www.un.org/sustainabledevelopment/development-agenda/>

¹¹ UNESCO Guidelines for Inclusion: Ensuring Access to Education for All, 2005, p. 15, <http://unesdoc.unesco.org/images/0014/001402/140224e.pdf>

There are different concepts used both internationally and nationally with regard to ideas of inclusion, and this fact can disturb and disorientate. Previously, the concept “integration” was widely acknowledged, and it can be found in international documents as in domestic law as well. Terms “mainstreaming”, “normalization” and others are used in different countries and educational systems.¹²

Though similar meanings may be imparted to different terms, and they are used interchangeably, it is important that stakeholders agree on understanding of those terms and interpret them in accordance with the law.

UNESCO documents and the Convention on the Rights of Persons with Disabilities highlight the term “inclusion” thus emphasizing that disability shall be perceived not as a personal and medical issue but a social, environmental and attitudinal.

UN documents adopted during the recent decades are based on the “social model” of disability. This concept as opposite to “medical model” is based on the assumption that disability is not a personal issue, but socially constructed phenomenon buttressed by the stereotypes of disability as illness, helplessness and a need of a special (segregated) environment. Social model of disability in education builds upon pupil’s abilities, resource politics, and quality adapted methods of teaching. According to the social model, not the child, but the education system needs to be corrected and adjusted.

As an example, South African Government White Paper, 2001 discerns integration and inclusion as follows¹³:

Mainstreaming or integration		Inclusion
Mainstreaming is about getting learners to ‘fit into’ a particular kind of system or integrating them into the existing system		Inclusion is about recognizing and respecting the differences among all learners and building on the similarities
Mainstreaming is about giving some learners extra support so that they can ‘fit in’ or be integrated into the ‘normal’ classroom routine. Learners are assessed by specialists who diagnose and prescribe technical interventions, such as the placement of learners in programmes		Inclusion is about supporting all educators and the system as a whole, so that the full range of learning needs can be met. The focus is on teaching and learning actors, with the emphasis on the development of good teaching strategies that will be of benefit to all learners
Mainstreaming and integration focus on changes that need to take place in learners so that they can ‘fit in’. Here the focus is on the learner		Inclusion focuses on overcoming on barriers in the system that prevent it from meeting the full range of learning needs. The focus is on adaptation and support systems available in the classroom

¹² Fortin, Jane. Children’s Rights and the Developing Law, note 24 on p. 432. The author refers to other sources.

¹³ South Africa: Integration or mainstreaming versus inclusion. South African Government White Paper, No. 6, 2001. Quoted in Reiser, Richard. Implementing Inclusive Education: A Commonwealth Guide to Implementing Article 24 of the UN Convention on the Rights of Persons with Disabilities. Commonwealth Secretariat, London, 2008, 2012, p. 49.

2. The concept of disability

There is no a unified concept of disability. A universal legal notion of disability is described generally in international law. However, the definition of disability differs in international and domestic law, as well as in national legal systems.

The concept of disability included into the Standard Rules on the Equalization of Opportunities for Persons with Disabilities of 1993 was connected to the term ‘impairment’ (which tends to represent disability as individual problem) despite the attempt to focus on barriers of social and environmental character:

The term ‘disability’ summarizes a great number of different functional limitations occurring in any population in any country of the world. People may be disabled by physical, intellectual or sensory impairment, medical conditions or mental illness. Such impairments, conditions or illnesses may be permanent or transitory in nature.

The conceptual change in the definition of disability has been made in the recent decades through the process of development from medical to social model of disability. Being interpreted through the concept of human relations the notion of disability varies in specific contexts, situations and environments.

The CRPD introduced a definition of disability based on the relational approach in the preamble to the document:

“...disability is an evolving concept and ... disability results from the interaction between persons with impairments and attitudinal and environmental barriers that hinders their full and effective participation in society on an equal basis with others”.

According to the CRPD disability should be understood not as individual impairment but as a result of interaction which causes exclusion and discrimination. If a person using a wheelchair has to stop in front of the stairs and cannot enter a public building is it his or her individual problem? A house which is not provided with minimal measures of accessibility (doorways accessible to wheel-chairs, a rampant, lift and so on) becomes a set of barriers which are disabling.

Similarly, inaccessible schools and classrooms, as well as teaching which is not adapted result in barriers and discrimination in education. It is important that social and physical environment is in correspondence with different human needs.

3. Living with a disability throughout history: *What can we learn from it today?*

3.1 Historical outline

Man is consciously or unconsciously visualizing images that he sees in his view and fields of interest. This image is formed by an active interaction between our own self, our internalized ideal of an image and the images we have of others. Hereby upbringing, education, mass media, advertising, art, science, literature and personal experiences play an important role.

The idea that we build around people with disabilities manifest in the way we communicate, our social behavior and our ethical considerations towards them. To gain insight into the current perception of people with disabilities, we must bring the growing complexity and rationalization of Western society into account. Visions of disability and sickness are rooted cultural and locally. Also the economic situation prevailing at the times as well as the community where these interactions happen play an important role, although circumstances evolve over time.

3.2 The natural selection of the weak

In prehistoric times, the natural selection of weaker members of the species was one way in which certain traits were gradually eliminated from a species group. In 'the struggle of life', the weaker members were rather defenseless. Nevertheless, some people survived by the grace of stronger tribesmen. The statement "the more primitive the society, the more negative the treatment of disabled and sick" is contradicted according to archaeologists and anthropologists.

In Seeberg (Germany) and Yorkshire (England) skulls of children with hydrocephalus excavated from the Neolithic period (between 5,000 and 15,000 years before the Western calendar) were found. Both children were not slain, ostracized or neglected, but rather cared for in community context and buried after their death.

During the Greek antiquity the idea of social selection persisted. For economic and demographic reasons the government coordinated among other things the reduction of births among the population. Children with disabilities were stigmatized as being considered inferior and useless to society. Deformity was a political mistake with far-reaching consequences. Newborns with visible physical 'defects' were murdered, sold as slaves or put into foundling because they were considered undesirable.

"Portentosos fetus extinguimus, liberos quoque, si debiles monstrosique editi sunt, mergimus; nec ira sed ratio est a sanis inutilia secernere. / "Terror-inspiring births we eliminate, even children, if they are born defective and monstrous, we drown; and it is certainly no anger, but reason that separates the healthy from the useless" (De Ira, Liber I.15.2)

Children who developed disabilities as they got older escaped the brutal selection at birth and were kept alive: for example, children with a hearing impairment, vision problems or severe speech disorders, children with mental disability or dwarfism. Many newborns with physical disabilities were abandoned or hidden from public view and scrutiny. Yet it appears based on historical research some of these children were kept alive in certain circumstances¹⁴. This teaches us that it is not a monolithic story.

Among persons with disabilities, women and members of the lower classes were the most disadvantaged. The social background influenced the perception of disability.

The famous Homer was depicted as a blind poet. Their blindness was considered as a sign of being gifted with an almost supernatural light of wisdom¹⁵. This positive approach was not for blind people from disadvantaged backgrounds. Being gifted and

¹⁴ Rose (2003)

¹⁵ Garland (1995)

blind seemed to favor those from a higher social class while those from poor backgrounds were not likely to be considered as gifted and remained outcasts in financial poverty.

3.3 Christianity

In the fourth century, Christianity became the Roman state religion and its hopeful message of charity and mercy became very widespread. In the early middle Ages, the monks installed their monasteries as guesthouse for pilgrims passing through as well as the elderly and the sick. Over time, the monks also built separate guest houses at the gates of monasteries where they received poor, sick and disabled beggar asking for alms. Children and adults with any form of 'Foolishness' were as 'special guests' tolerated. They did simple tasks and could usually count on the kindness of family and villagers. Extremely 'insane' people were shackled in chains while the blind people suffered. Blindness was considered a just form of judicial punishment where suspected sexual offenders had their eyes gouged out because the judges felt that the permanent disappearance of all visual stimuli would also extinguish the sexual stimuli¹⁶.

Until the eighteenth century, blind people often had no alternative but humbly appeal for charity. Besides being considered 'fools' it was considered amusing to have them entertain the nobles at court. Deaf people also suffered a lot of discrimination. People who were deaf from birth were worse off because they could not develop language and therefore expected to learn nothing. It was felt that education and training for them was pointless, as they were not expected to make any intelligible sounds. It was widely agreed that they were misfits in society: they were 'deaf, dumb and stupid'.

3.4 Renaissance

A major advancement for young people with disabilities started with the development of the individual education of deaf children at the end of the 16th century, in colonial Spain. To keep their fortune within their extended family, many marriages were arranged with relatives. This had an unexpected side effect within the Spanish high society. A hereditary form of deafness developed. The monk Pedro Ponce de León was approached by one of the noble families to teach their children how to read and write. He used a hand or finger alphabet, which he also had to teach the family them to allow them communicate with their deaf family member. Later visitors from England were inspired and created in England advanced methods for teaching deaf children. These methods were largely kept secret from the public. In the centuries to follow, there was more openness in sharing initiatives developed for the education of children and people with disabilities specifically for poor and neglected children in the transition from the seventeenth to the eighteenth century already by educators such as La Salle, Francke and Pestalozzi.

In the last decades of the 18th, a new philosophy developed and found an echo in literature. Political and industrial innovations caused major changes in Western society. This created a new class distinction now between wealthy citizens and the mass of unskilled workers. Education was one of the hot topics of the new society. For the first time in history, books for blind people were available. Yet its success was limited because it was a difficult, slow and cumbersome process for blind children to learn. Eventually it was Louis Braille, who created a script with six points in embossed paper that connected more strongly to the needs, wishes

¹⁶ Kirtley (1975)

and capabilities of blind people. Yet it was only 50 years later that Braille was officially accepted by several educators after a long period of his methods being rejected. They assumed that people with disabilities did not have the skills to improve the quality of communication and teaching methods themselves, let alone estimate which teaching materials would be good for them¹⁷.

Within the structure of the new society, a more humane treatment of children in general and children (and adults) with disabilities in particular arose. Within the framework of salvation pedagogy Philippe Pinel pioneer of French psychiatry made a symbolic action in the 1790s with a revolutionary character¹⁸. He freed in Hôpital Bicêtre (Paris) some people considered insane of their iron chains and advocated a more humane approach to these patients. He suggested a therapeutic-disciplinary approach, the chains must be replaced by measuring subtle forms of control, based on employment and ongoing supervision, aimed both body and mind. Initially they wished to “cure” the persons with disabilities in order to integrate them into the working environment.

3.5 Capitalism

Capitalism and increased industrialization in the 19th century contributed to economic growth in Western Europe. However, this did not mean a rise in prosperity. On the contrary, the gap between rich and poor widened. With the constant threat of unemployment and without the protection of social laws, factory workers, men, women and children worked long and hard for a pittance. Structural poverty was a fact and people with disabilities suffered twice as much as other in their economic class. Towards the end of the 19th century the idea of the Greco-Roman antiquity pseudo-science of un-natural selection resurfaced under the eugenics approach. Unfavorable genetic traits were considered a threat to the wider community to be erased in order to refine the human race. Different 'race expert' of the 19th century built an argument of the hierarchy of races. Medical science was looking for a link between mental illness, intellectual disabilities and their biological basis. They described mental illness and intellectual disabilities increasingly as inherited defects which they assumed would cause a progressive degeneration within families. In several states in the United States people born-deaf, woman and men with what was considered a low IQ under the age of 70 were sterilized.

The belief in the healing and reintegration of children and adults with disabilities in the 'normal' society was now put in doubt. Insane adults were labeled 'idiots', 'poor', and 'defective'. Disabled children were more or less in specialized institutions under the medical model. For deaf children, this meant that they had to renounce their familiar sign language and had to learn to talk and lip-read to communicate with anyone normal. This vision was officially ratified at the congress of Milan in 1880. Also from the 19th to the 20th century, a previously undetected group of children yet visible, namely, children with mild mental disability, were labeled 'backward' or 'retarded'.

3.6 Recovery after World War II

The misery of the Second World War and the national gratitude towards war invalids after 1945 resulted from moral, political and economic motivation for expanding the range of special features for 'disabled' children and adults, as they were called then. There was a move

¹⁷ Wuyts (2003)

¹⁸ Wuyts (2003)

to re-establish a pedagogical approach that was torn to shreds by the excesses of eugenics and racial theories.

The inclusive thinking arose in 1960s. By the 70s the Scandinavian countries changed the development paradigm and the standardization and integration principle (Nirje, Bank-Mikkelsen) was renewed and started to spread across Europe. Eventually, barriers were dismantled between institutions and society. Thereafter, initiatives to integrate young people and adults with disabilities in everyday society were introduced in various areas such as mobility (accessibility of public space), education, housing, employment, leisure and tourism.

The 'integration' concept meant the 'adaptation to standards' of the group with whom you want to connect. This approach supports integrated education of young people with disabilities to meet the conditions and the competences of regular or mainstream schools. People started to grow more aware and respectful with how they interacted and talked about people with disabilities. In the education sector, the term was coined 'pupils with special educational needs'. This designation emphasizes support required, rather than the diagnosed problems of the students.

In the last quarter of the 20th century, the emancipation movement developed a new conceptual framework and citizenship paradigm. Researchers approached disability more as a multi-factor challenge and given a social construction. Disability in other words, is an interaction between individual factors and social organization.

3.7 What can we learn?

As we reflect on the history of the perception held about people with disabilities, it is clear that certain ideas and images are partially or fully eliminated while others still persist to date¹⁹. The major phenomenon that continues since the 18th century is the medical, clinical picture of people with disabilities as being weak and helpless who require professionals take care of them in a protected environment. Children with disabilities are still oriented with a certain habit to specialized care institutions and special education. Alternatives are not always seriously considered and cooperation with existing regular services is limited. As a result, people with disabilities are not assessed based on their abilities but reduced to their disability.

In the last quarter of the 20th century we see a strong mind shift. The attention shifted from the limits of people with disabilities to their capabilities and potential. This led to the ideas of inclusive education as we know it today.

4. Children and youth with special needs

Throughout history an inclusion mindset occurred with the main goal to create more opportunities for all children and youth in the society. Different groups of children are exposed to exclusion and discrimination in education: children and young people with emotional and behavioral problems, learning disabilities, intellectual disabilities, autism spectrum disorders, hearing disorders, visual impairments, physical disabilities and hospitalized children or children with chronically illness (see, Annex I On types of special needs).

¹⁹ Wuyts (2003)

The issue of discrimination and exclusion in education is not exclusive to children with disabilities. Recently researchers draw attention to the psychological problems of young refugees or displaced children (Annex I, para 9).

UNESCO emphasizes that among groups at risk of exclusion are children from ethnic minorities, language discrimination, child workers, domestic workers, children who have HIV/AIDS or are HIV/AIDS orphans, children who are abused, migrant children, children from religious minorities, poverty-stricken children, street children, children in conflict zones and child soldiers, nomadic children.²⁰ Many of these children have special educational needs.

Some children are more vulnerable than others with regard to access to education, that is: persons with intellectual disabilities or multiple disabilities, persons who are deafblind, persons with autism or persons with disabilities in humanitarian emergencies. “Special needs” is not necessarily a life-long circumstance. Children may have special needs following their learning difficulties at some period or periods during education. UNESCO suggests that the term “special educational needs” refers to all those children and youth whose needs arise from disabilities or learning difficulties.²¹

Chapter II - Legal framework on the rights of persons with disabilities and special educational needs

1. The right to education of persons with special needs and disabilities

The right to education is a universal right for all. Article 13 (1) of the UN Covenant on economic, social and cultural rights obligates the States Parties to recognize *the right of everyone to education*. Article 28 of the Convention on the Rights of the Child stipulates the right of the child to education on the basis of equal opportunity. Article 24 (1) of the Convention on the Rights of Persons with Disabilities states an obligation of States Parties to recognize the right of persons with disabilities to education without discrimination and on the basis of equal opportunity provided by an inclusive education system at all levels.

One of the first documents which prepared the way to the acceptance of the right to inclusive education internationally as legally binding norm was the Salamanca Statement and Framework for Action on Special Needs Education²².

The Salamanca Statement stipulates that states should adopt as a matter of law or policy the principle of inclusive education, enrolling all children in regular schools, unless there are compelling reasons for doing otherwise.

Framework for Action on Special Needs Education established a list of recommendations for practical provision of inclusive education, including the following:

²⁰ UNESCO Guidelines for Inclusion: Ensuring Access to Education For All. UNESCO, Paris, 2005, p.11

²¹ The Salamanca Statement and Framework for Action on Special Needs Education, adopted by the World Conference on special needs education: Access and quality (Salamanca 7-10 June, 1994), para 3

²² The Salamanca Statement and Framework for Action on Special Needs Education was adopted by the World Conference on special needs education: Access and quality. The Conference was organized by the Government of Spain in cooperation with UNESCO and held in the town Salamanca during 7-10 June, 1994. The Conference participants represented 92 governments and 25 international organizations in the commitment to the goals of the “Education for All” movement

- schools should accommodate all children,
- learning must accordingly be adapted to the needs of the child rather than the child fitted to preordained assumptions regarding the pace and nature of the learning process;
- developing a child-centered pedagogy and a pedagogy which focuses on potential and not on impairments.

Inclusive education is a concept which integrates both the right to education and the right of non-discrimination.

2. Equality and non-discrimination

Equality and non-discrimination is one of the basic principles and norms of international human rights law. All the UN Conventions include provisions on equality and non-discrimination.

The UNESCO Convention against Discrimination in Education (1960) as well prohibit any exclusion from or limitation to educational opportunities on the bases of socially ascribed or perceived differences, such as sex, ethnic origin, language, religion, nationality, social origin, economic condition, ability, etc. The list of prohibited grounds is non-exhaustive, which makes the provisions of this Convention applicable to other cases, in particular, disability and special needs.

In policy documents and analyses in the field of education the concept of equality is sometimes replaced with the notion of equity. The term ‘equity’ relates to social justice (fairness, justness, and impartiality of distribution of education at all levels). It is distinguished from ‘equality’ which associates with a more formal notion (in terms of quantity, rank, status, value or degree).²³ The term ‘equity’ was defined by the World Bank in relation to “disparities in the access to schooling across population groups as well as in the distribution of public spending among them.”²⁴

In 1993 the Organization for Economic Co-operation and Development (OECD) accepted four basic interpretations of equity in education which apply particularly to students with disabilities²⁵ and were reaffirmed later as research parameters:

- 1) *Equity of access or equality of opportunity* refers to the full range of resources and services (e.g. health, welfare, transportation, income generation) needed to enroll in school;
- 2) *Equity in terms of learning environment or equality of means* refers to the quality of teaching, curriculum, and instruction provided for participation in school;
- 3) *Equity in production or equality of achievement (or results)* refers to the direct outcomes of school (e.g., diplomas, occupational, political, and recreational skills preparatory for post-school activities);

²³ Inequality in Education: comparative and international perspectives (2008) / Edited by Donald B. Holsinger and W. James Jacob. Springer, p. 4

²⁴ Quoted in Tomaševski, Katarina (2006). Human rights obligations in education: the 4-A Scheme. Wolf Legal Publishers, p. 44

²⁵ OECD (2004). Equity in Education: Students with Disabilities, Learning Difficulties and Disadvantages, p. 17.

4) *Equality of realization or exploitation of results* refers to the cultural, economic, and social capital that provides life-long opportunities for productivity and community participation.²⁶

The concept of 4-As introduces criteria for assessment of the measures aimed at equality in education. It becomes a standard in analysis of state policy and action in education. The 4-A scheme was set out by the former UN Special Rapporteur on the right to education Katarina Tomaševski and confirmed by the Committee on economic, social and cultural rights in its General Comment 13 on the right to education.²⁷

The scheme consists of the following characteristics of education:

Availability means establishing sufficient quantity of educational institutions within the jurisdiction of the state party to the Covenant. Availability requires not only technical equipment (buildings, sanitation, and water supply) but trained teaching personnel, libraries and so on as well.²⁸

Accessibility for all implies non-discrimination on any of prohibited grounds, as well as physical accessibility to learning environment and economic accessibility (affordability).

Acceptability refers to the value component of education, i.e. the contents of curricula, cultural appropriateness, relevance and quality of teaching programs and methods.

Adaptability means responsiveness to the needs of students as well as social changes and cultural developments in society.

The UN Committee on economic, social and cultural rights underlines that obligations of States Parties to the Covenant include each of these “essential features” of the right to education.

Persons with disabilities and special needs more often than persons without such needs and disabilities face barriers in access to education. Many of those barriers are socially constructed and rooted deeply in prejudices, stereotypes and negative attitudes inherited from the past. Therefore, governments should take active measures to overcome negative attitudes not only on the political level, but also legally and practically.

While the Covenant implies that States Parties may have economic and technical constraints in the implementation of all the rights stipulated in it, there are two obligations which are of immediate and irreversible character: to take steps forward (to take effective and expeditious measures in order to implement obligations) and to guarantee that the right to education is exercised without discrimination of any kind.²⁹

3. Inclusive education in domestic legal systems

International human rights documents are binding for all States Parties to the United Nations Conventions, including the Covenant on Economic, Social and Cultural Rights, the

²⁶ Peters J. Susan (2008), p. 150

²⁷ E/C.12/1999/10

²⁸ Obligation to provide education available to every child implies the necessity to provide education financially as well as provision of state control over education. See, Tomaševski, Katarina (2006). Human rights obligations in education: The 4-A Scheme. Wolf Legal Publishers, p. 16

²⁹ E/C.12/1999/10 para 52 – 57.

Convention on the Rights of the Child and the Convention on the Rights of Persons with Disabilities. Accordingly, many states have accepted the binding character of international provisions in their policy-making and incorporated international norms into domestic legislation and case-law.

Education laws in many countries include the concept and the principle of inclusive education as obligatory to educational institutions and administrations.

Albania	
Belarus Republic	<p><i>Principles of state policy in the field of education: guaranteeing the constitutional right of everyone to education and ensuring equal access to education for all; ensuring the accessibility of education, including persons with special psychophysical development in accordance with their state of health and cognitive abilities, at all levels of basic education and in obtaining additional education (the Code of the Republic of Belarus on Education, 2011)</i></p> <p><i>The Concept of the Development of Inclusive Education of Persons with Peculiarities of Psychophysical Development in the Republic of Belarus, 2015</i></p>
Belgian Education Act	
Italy	
Lithuania	
Poland	
Russia	<p><i>For the purposes of the present Federal Act the following basic terms apply: ...</i></p> <p><i>Inclusive education – the provision of equal access to education for every pupil taking into account the diversity of special educational needs and individual abilities (Article 5 par. 27 of the Federal Education Act)</i></p>

Questions and tasks for discussion

The Committee on the Rights of the Persons with Disabilities points out the importance of “recognition of inclusion as the key to achieving the right to education”.³⁰

Can you give an example from your experience or views what can inclusion contribute to education. If you have met negative attitude towards inclusive education, was it motivated by the wrong interpretation of inclusion or the legal definition of it?

³⁰ Committee on the Rights of Persons with Disabilities, general comment No. 4 (2016) on the right to inclusive education, CRPD/C/GC/4, para 2

Chapter III - Rights (of children with special needs and disabilities) in education

1. The right to inclusive education: Article 24 of the CRPD. Accessible environment

The CRPD has introduced the right to inclusive education and a set of binding requirements that shall be taken by States Parties to the Convention with regard to this right. A list of obligations stipulated in Art.24 (2), (3) and (4) include, in particular:

- Provision of reasonable accommodation of the individual's requirements;
- Provision of the support required to persons with disabilities within the general education system;
- Effective individualized support measures in environments that maximize academic and social development, consistent with the goal of full inclusion.
- Facilitating the learning of Braille, alternative script, alternative means of communication and orientation and mobility skill, facilitating the learning of sign language;
- Ensuring that the education of persons, and children in particular, who are blind, deaf or deafblind, is delivered in the most appropriate languages and modes and means of communication for the individual, and in environments which maximize academic and social development;
- Taking appropriate measures to employ teachers, including teachers with disabilities, and to train professionals and staff who work at all levels of education.

The list is non-exhaustive so far the provisions of Article 24 should be analyzed in the context of the Convention in a whole.

Inclusion in education has at least 3 dimensions:

- accessible environment;
- adapted methods of teaching and curriculum;
- provisions of special methods of support addressing special educational needs.

Accessibility is one of the general principles on which the CRPD is built upon. Article 9 (1) of the CRPD states:

1. To enable persons with disabilities to live independently and participate fully in all aspects of life, States Parties shall take appropriate measures to ensure to persons with disabilities access, on an equal basis with others, to the physical environment, to transportation, to information and communications, including information and communications technologies and systems, and to other facilities and services open or provided to the public, both in urban and in rural areas. These measures, which shall include the identification and elimination of obstacles and barriers to accessibility, shall apply to, inter alia:

(a) Buildings, roads, transportation and other indoor and outdoor facilities, including schools, housing, medical facilities and workplaces;

(b) Information, communications and other services, including electronic services and emergency services.

Accessible environment in education refers to material facilities (school buildings, including entrances and doors, corridors and passageways), means of information and communication (Braille or alternative script, special ICT – information and communication technologies, sign language interpretation and so on) as well as non-material (non-discrimination, psychological support). All of the measures of accessibility shall apply on all levels of education and include both general accessibility of buildings and classrooms, as well as other parts of educational institutions (libraries, canteens, toilets, wardrobes, swimming pools and so on).

Basic concepts of the Convention on the rights of persons with disabilities include the definitions of universal design and reasonable accommodation. Article 2 of the CRPD states:

"Universal design" means the design of products, environments, programs and services to be usable by all people, to the greatest extent possible, without the need for adaptation or specialized design. "Universal design" shall not exclude assistive devices for particular groups of persons with disabilities where this is needed.

"Reasonable accommodation" means necessary and appropriate modification 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.

Whereas universal design implies that all public facilities, services and goods shall be accessible to everyone, reasonable accommodation is an individual adjustment of these. Many buildings, services and goods are still not accessible for all persons. Therefore reasonable accommodation of a facility or a device can provide equal access. **For example, some schools have no sufficient resources to reconstruct their buildings in order to provide accessibility for all pupils and teachers. One way to solve immediately the issue of accessibility of education on an equal basis is to assign a classroom on the first floor, so to provide access to this classroom for all pupils, in particular to a pupil who uses a wheelchair.**

If a standard curriculum does not meet special educational needs of a pupil the school shall adapt or elaborate individual curriculum which thus may also be an example of reasonable accommodation.

The Committee on the Rights of the Child notes:

The manner and form of inclusion must be dictated by the individual educational needs of the child, since the education of some children with disabilities requires a kind of support which may not be readily available in the regular school system.³¹

(A task: can you give an example of measures of reasonable accommodation in education from your experience or imagine a kind of measure that may help a child to feel equal to others at school?)

³¹ Committee on the Rights of the Child, general comment No. 9 (2006), CRC/C/GC/9, para 66

Wim is a 17 year old student who has an interest in science. Wim has a visual impairment. The school he attends has been able to respond to his specific needs. For instance - His school adapted the hallway by putting braille writings on the doors and in the classrooms. Due to this, Wim always find his way to right classroom. In addition, the school also works with an external support center. During consultation, Wim's assignments are discussed so that he understands and executes them well. The teachers and fellow students support him. Wim has been able to complete the school program.

2. Special measures of support in schools

2.1 Key players in support of inclusion

Parents, teachers, communities, school authorities, curriculum planners, training institutes and entrepreneurs in the business of education are among the actors that can serve as valuable resources in support of inclusion. Among them, teachers, parents and communities are more than a valuable resource; they are the key supporters of the inclusion process. This involves a willingness to accept and promote diversity and to take an active role in the lives of students with special needs, both in and out of school. The optimal learning environment for inclusion depends largely upon the relationship between teachers, parents, other students.

Nevertheless, it is also the responsibility of the Ministry of Education to ensure that school-accessibility and child-centered programs are elaborated, implemented and evaluated³². The outcome of such programs and the results of their evaluation will improve the teaching and learning environment.

2.2 How attitudes and values can affect inclusion?

Inclusion often requires a shift in people's attitude and values. Change is crucial, but can take time and involves significant reassessment of concepts and behaviors.

It has been shown that teachers' positive attitudes towards inclusion depend strongly on their experience with students, especially students who are perceived as "challenging". The attitude of a teacher is influenced by the teacher's education; the availability of support within the classroom, class size and overall workload. Several studies have shown that a negative attitude of teachers, parents and other family members create the major barrier to inclusion. Children only show prejudice through adult's example. Therefore, introducing inclusion as a guiding principle in these different areas will have implications on the attitude of teachers and other key actors.

Question one can ask himself for effective change of attitude³³:

- Is the concept of inclusive education well known and accepted?
- Do parents take an active role in education?
- Have awareness programs been launched to support inclusive education?

³² UNESCO Guidelines for Inclusion: Ensuring Access to Education for All, 2005, p. 21, <http://unesdoc.unesco.org/images/0014/001402/140224e.pdf>

³³ UNESCO Policy Guidelines on Inclusion Education, 2009, p. 18, <http://unesdoc.unesco.org/images/0017/001778/177849e.pdf>

- Are the local community and the private sector encouraged to support inclusive education?
- Is inclusive education seen as an important factor for economic and social development?
- Are competencies available at special schools or institutions well used to support inclusion?

Policy-makers at all levels, including the school level, should regularly also reaffirm their commitment to inclusion and promote positive attitudes among children, among teachers and other people involve in the society. Mass media can play a powerful role in promoting positive attitude towards the integration of people with special needs, overcoming prejudice and misinformation, and infusing greater optimism and imagination about the capabilities of persons with disabilities. The media can also promote positive attitudes of employers toward hiring persons with disabilities. The media outlet should also be used to inform the public on new approaches in education, by promoting good examples and successful experiences³⁴.

2.3 School factors

To contribute to the success of inclusive schools, the following aspects of schooling are necessary: curriculum – building - school management - educational staff - information and research center - partnership with parents - community involvement and extracurricular activities.

2.4 Curriculum buildings

An inclusive curriculum develops children’s cognitive, emotional, social and creative capabilities. The curriculum is based on the four pillars of education for the twenty-first century – learning to know, to do, to be and to work together³⁵. It has an instrumental role to play in fostering tolerance and promoting human rights. It’s also to transcend cultural, religious, and gender differences. It involves breaking negative stereotypes not only in textbooks but also in attitudes and expectations of teachers³⁶.

An inclusive approach to curriculum policy recognizes that while each learner has multiple needs – even more so in situations of vulnerability and disadvantage – everyone should benefit from a commonly accepted basic level of quality education. This underlines the need for a common core curriculum that is relevant for the student but at the same time give an opportunity for flexible methods. The curriculum policy has built-in flexibility and can be adjusted to different needs of the pupils. This offer teacher’s freedom to choose their working methods, allow more time for guidance classrooms and varying the time that students devote to particular subjects.

Mozaïekschool is a primary school in Belgium where all the students have an individual educational plan. In class the group of pupils divided into four groups with each group represents a level. The students receive customized exercises. Pupils, who

³⁴ UNESCO The Salamanca Statement and Framework For Action, 1994, p. 40, http://www.unesco.org/education/pdf/SALAMA_E.PDF

³⁵ Delors, J. et al. 1996. Learning: the Treasure Within. Report to UNESCO of the International Commission on Education for the Twenty-first Century. Paris, UNESCO, p.

³⁶ UNESCO Policy Guidelines on Inclusion Education, 2009, p. 18, <http://unesdoc.unesco.org/images/0017/001778/177849e.pdf>

work faster, regularly get extra exercises. Students who need more time or have problem understanding exercises get more instruction from the teacher. The teacher focuses on collaborative learning, allowing students to help each other. If necessary the teacher will intervene. For each course students are put into a group, depending on their level for that course. A student can, for example, be strong in mathematics, but slower for writing and vocabulary.

Accessible and flexible curricula, textbooks and learning materials can serve as the key to creating schools for all. Many curricula expect all pupils to learn the same things, at the same time and by the same means and methods. But pupils are different and have different abilities and needs. It is important, that the curriculum is flexible enough to provide possibilities for adjustment to individual needs and to stimulate teachers to seek solutions that can be matched with the needs, abilities and learning styles of each and every pupil³⁷.

In order to follow the progress of each child, assessment procedures should be reviewed. Progress should be incorporated into the regular educational process in order to keep pupils and teachers informed of the learning skills attained as well as to identify difficulties and assist pupils to overcome them.

For children with special educational needs a consistence support should be provided, ranging from minimal help in regular classrooms to additional learning support programs within and outside of the school, where necessary to the provision of assistance from specialist teachers and external support staff. In addition, appropriate and affordable technology should be used when necessary to enhance success in the school curriculum and to aid communication, mobility and learning. Technical aids can be offered in a more economical and effective way if they are provided from a central pool in each locality, where there is expertise in matching aids to individual needs and in ensuring maintenance³⁸.

Checklist for inclusive curricula³⁹:

- Are principles of non-discrimination, appreciation of diversity and tolerance being fostered through the curriculum?
- Are human rights and children's rights part of the curriculum?
- Does the curriculum address the coexistence of rights with responsibilities?
- Is the curriculum inclusive of all children?
- Is the content of the curriculum relevant to the needs and future of children and youth?
- Are the programs, learning materials and teaching methods well adapted and relevant to the lives of youth and adults?
- Does the curriculum allow for variation in working methods?

³⁷ UNESCO Policy Guidelines on Inclusion Education, 2009, p. 19, <http://unesdoc.unesco.org/images/0017/001778/177849e.pdf>

³⁸ UNESCO Policy Guidelines on Inclusion Education, 2009, p. 19, <http://unesdoc.unesco.org/images/0017/001778/177849e.pdf>

³⁹ UNESCO Policy Guidelines on Inclusion Education, 2009, p. 19, <http://unesdoc.unesco.org/images/0017/001778/177849e.pdf>

- Is the curriculum sensitive to gender, cultural identity and language background?
- Does the curriculum discuss education for sustainable development?
- Does the curriculum reflect visions and goals of wider development in your country?
- Is feedback gathered and integrated for regular revision of the curriculum to take new visions and circumstances into consideration?

2.5 School management

School heads and local administrators can play a major role in making schools more responsive to children with special educational needs. Most important is that they are given necessary authority and training to do so. They should be invited to develop more flexible management procedures, to redeploy instructional resources, to diversify learning options to mobilize child-to-child help, to offer support to pupils experiencing difficulties and to develop close relations with parents and the community. Successful school management depends upon the active and creative involvement of teachers and staff, and the development of effective co-operation and team work to meet the needs of students⁴⁰.

School principals have a special responsibility in promoting positive attitudes throughout the school community and in arranging for effective co-operation between class teachers and support staff. Appropriate arrangements for support and the exact role to be played by various partners in the educational process should be decided through consultation and negotiation⁴¹.

If teachers experience difficulties, they can work closely with a professional support team and a resource center. The process can have different forms, the professional support team and resource center can do an effective action-oriented diagnosis, give information and advice, and provide short-term counseling. This team will provide further support to ensure the needs of the student are met. Parents and pupils should also be involved during the whole process and have an input to enable the effective cooperation and coordination between all stakeholders (see: Parents partnership).

2.6 Educational Staff

A key factor towards the progress of inclusive schools is the appropriate preparation of the educational staff. Recruiting qualified teachers and other educational staff who have disabilities can serve as role models for children with disabilities. A recurrent problem with education systems is still the lack of role models for such students. Special needs student need opportunities to interact with adults with disabilities who have achieved success so that they can pattern their own life and aspirations on realistic expectations. In addition, student with disabilities should be given training as well as examples of empowerment so that they can assist in shaping the policies that will affect them later in life. Education systems should therefore seek to involve successful individuals with disabilities from within or outside the region.

The way teachers teach is of critical importance in any reform designed to improve inclusion in schools. The knowledge and skills required from the educational staff are in general those

⁴⁰ UNESCO Policy Guidelines on Inclusion Education, 2009, p. 23, <http://unesdoc.unesco.org/images/0017/001778/177849e.pdf>

⁴¹ UNESCO Policy Guidelines on Inclusion Education, 2009, p. 24, <http://unesdoc.unesco.org/images/0017/001778/177849e.pdf>

of good teaching, assessing special need, individualizing teaching procedures, adapting curriculum content, utilizing technology, and more.

Teachers must make sure that each pupil understands the instructions and expected work. Since teaching only has meaning and relevance if the pupil acquires the content, teachers need to understand the pupil's reaction to what is being taught. Teachers as well as school leaders must be encouraged to discuss learning and teaching as well as methods and to further develop the learning environment. They especially need to be given a chance to reflect together on their practice, and to influence the methods and strategies used in their classrooms and school. Teachers must be familiarized with new curricula and trained in addressing student performances. A child-centered curriculum is characterized by a move away from rote learning and towards greater emphasis on hands-on, experience-based, active and cooperative learning, so inclusive education can be more effectively applied. In addition, teachers should give specific attention to the collaboration with specialists and with parents of children with special needs.

The educational staff needs to be trained and ready to assist children, youth and adults in their development and learning process on a daily basis. Teaching-learning methods demand a transformation from long theoretical, pre-service-based teacher training to continuous in-service development of teachers. It must be noted that all specific knowledge and competence cannot be given to one individual. Several specializations are needed to cooperate with and support school staff. Moreover, policies must address the status of teachers, their welfare and professional development. It is important to focus on creating a beneficial learning environment so that all children can achieve their potential. This involves student-centered teaching methods and appropriate learning materials. ICTs and the use of new technology constitute a vital part of modern societies and can be used when possible. The Salamanca Statement and Framework For Action, suggested activities that make schools more effective by: activities that ease the transition from home to school for grade one pupils, teacher trainings on child-centered techniques such as asking pupils questions, assigning the best teachers to the early grades to ensure a solid foundation in literacy and numeracy, remediation to pupils at risk of failure, improvement of classroom management and more.

The required skills should be taken in account during assessment of studies and teacher certification. Written materials should be prepared and seminars should be organized for local administrators, supervisors, head teachers and senior teachers. This to develop their capacity, to improve leadership in the area of special educational needs, and to support and train the less-experiences teachers. The major challenge lies in providing in-service-training to all teachers. This should be developed at school level by means of interaction with trainers and supported by other educational formats.

Checklist on teachers and the learning environment⁴²:

- Are there enough trained teachers deployed appropriately throughout the country?
- Is the teaching inclusive of all children, protective, gender responsive and encouraging of the participation of the learners themselves?

⁴² UNESCO Policy Guidelines on Inclusion Education, 2009, p.21, <http://unesdoc.unesco.org/images/0017/001778/177849e.pdf>

- Is the professional development and motivation of teachers enhanced by providing incentives and ongoing professional development?
- Are teaching methods interactive?
- Are teaching methods adapted to different age groups (children, youth and adults)?
- Are teachers encouraged to work in teams?
- Is the work project-oriented?
- Is teaching predominantly theoretical?
- Do materials cater to the needs of all learners with learning difficulties (visually impaired, hearing impaired, etc.)?
- Are teachers encouraged to cooperate with parents and civil society?

2.7 Information and research

The dissemination of examples of good practice could help to improve teaching and learning environment. This could be improved by research findings. With the support on national level experience and development of documentation centers could be used at valuable resources. The access to sources of information should be broadened.

Provision of support services is important for the success of inclusive educational policies. In order to ensure that, at all levels, external services are to be made available to children with special needs. Educational authorities should coordinate the following at local level:

- External support by resource personnel from various agencies departments and institutions,
- Such as advisory teachers,
- Educational psychologists,
- Speech and occupational therapists,
- Outreach staff of special schools and more.

After all, school clusters have proven to be a useful strategy in mobilizing educational resources as well as community involvement. Clusters of schools could be assigned collective responsibility for meeting the special educational needs of students in their area and given scope for allocating resources. Experience suggests that education services would benefit significantly if greater efforts were made to ensure optimal use of all available expertise and resources.

2.8 Parent partnership

The education of children with special educational needs is a shared task of parents and professionals. Parents are privileged partners as regards to the special educational needs of their children, and to an extent, should be given the choice in the type of education provision they desire for their child. After all, a positive attitude on the part of parents favors school and social integration. In order to assume the role of a parent of a child with special needs, parents need support. The role of families and parents could be enhanced by the provision of

information in simple and clear language. Particularly important task in cultural environments where there is little tradition of schooling addressing the need for information and training in parenting skills.

Still both parents and teachers may need support and encouragement in working together as equal partners. A co-operative, supportive partnership between school administrators, teachers and parents should be developed with parents regarded as active partners in decision-making. Parents should be encouraged to participate in educational activities at home and at school (where they could observe effective techniques and learn how to organize extra-curricular activities), as well as in the supervision and support of their children's learning⁴³.

Governments should take a lead in promoting parental partnership, through statements of policy and legislation concerning parental rights. The establishment of parents' associations should be promoted and their representatives involved in the design and implementation of programs intended to enhance the education of their children. Organizations representing people with disabilities should also be consulted concerning the design and implementation of programs⁴⁴.

2.9 Community involvement

Decentralization and local-based planning favors greater involvement of the communities in education and training of children with special educational needs. Local administrators should encourage community participation by giving support to representative associations and inviting them to take part in decision-making. By this mean, mobilizing and monitoring mechanisms are created composed of local civil administration, educational, health and development authorities, community leaders and voluntary organizations. These should be established in geographical areas small enough to ensure meaningful community participation.

Community involvement should be sought in order to supplement in-school activities, provide help in doing homework and compensate for lack of family support. A create role lies in the connection of the neighborhood associations in making premises available, the role of family associations, youth clubs and movements, and the potential role of elderly people and other volunteers, including persons with disabilities, in both in-school and out-school programs⁴⁵.

2.10 Extracurricular activities

To ensure full and effective participation and inclusion in society, it is necessary that students with special educational needs develop themselves outside of school as well; on social emotional psychological and physical level. The knowledge collected in school can be supplemented by further education with out-of-school activities and school support after school as we see in Article 30 or the right of persons with disabilities:

Article 30 (1) of the Convention on the Rights of Person with Disabilities stipulates the right to participate equally in cultural life and obligates States Parties to the Convention to take measures to ensure that persons with disabilities:

⁴³ UNESCO The Salamanca Statement and Framework For Action, 1994, p. 37, http://www.unesco.org/education/pdf/SALAMA_E.PDF

⁴⁴ UNESCO The Salamanca Statement and Framework For Action, 1994, p. 38, http://www.unesco.org/education/pdf/SALAMA_E.PDF

⁴⁵ UNESCO The Salamanca Statement and Framework For Action, 1994, p.38, http://www.unesco.org/education/pdf/SALAMA_E.PDF

- a) *Enjoy access to cultural materials in accessible formats;*
- b) *Enjoy access to television programmes, films, theatre and other cultural activities, in accessible formats;*
- c) *Enjoy access to places for cultural performances or services, such as theatres, museums, cinemas, libraries and tourism services, and, as far as possible, enjoy access to monuments and sites of national cultural importance.*

It further stipulates a number of measures that shall be provided in the sphere of leisure, recreation and sport as follows:

2. States Parties shall take appropriate measures to enable persons with disabilities to have the opportunity to develop and utilize their creative, artistic and intellectual potential, not only for their own benefit, but also for the enrichment of society.

3. States Parties shall take all appropriate steps, in accordance with international law, to ensure that laws protecting intellectual property rights do not constitute an unreasonable or discriminatory barrier to access by persons with disabilities to cultural materials.

4. Persons with disabilities shall be entitled, on an equal basis with others, to recognition and support of their specific cultural and linguistic identity, including sign languages and deaf culture.

5. With a view to enabling persons with disabilities to participate on an equal basis with others in recreational, leisure and sporting activities, States Parties shall take appropriate measures:

- a) *To encourage and promote the participation, to the fullest extent possible, of persons with disabilities in mainstream sporting activities at all levels;*

- b) *To ensure that persons with disabilities have an opportunity to organize, develop and participate in disability-specific sporting and recreational activities and, to this end, encourage the provision, on an equal basis with others, of appropriate instruction, training and resources;*

- c) *To ensure that persons with disabilities have access to sporting, recreational and tourism venues;*

- d) *To ensure that children with disabilities have equal access with other children to participation in play, recreation and leisure and sporting activities, including those activities in the school system;*

- e) *To ensure that persons with disabilities have access to services from those involved in the organization of recreational, tourism, leisure and sporting activities.*

Participation in sports has proven to be one of the key ways in which people with disabilities can demonstrate their place in the world. We can see an example of this at the Paralympic Games. Where disabilities do not hold back or restrict athletes.

2.11 Policy and resource requirements

In order to see effective changes in schools, it is crucial to recognize the development of inclusion as a key government policy. This should acquire a privileged place on the nation's development agenda. This way adequate resource can be obtained. The government encouragement and support is essential in devising effective and affordable solutions. Political commitment, at both the national and community level, is needed both to obtain additional resources and to redeploy existing ones⁴⁶.

The distribution of resources to schools is required to provide appropriate education for all children, with in mind their needs and circumstances. In the Salamanca statement and Framework for Action report, it is suggested to begin by supporting those schools that wish to promote inclusive education and to launch pilot projects in some areas in order to gain the necessary expertise for expansion and progressive globalization. In the globalization of inclusive education, it is important that the level of support and expertise have to match to the nature of the demand. Resources must be allocated to support services for the training of mainstream teachers, special education teachers and the provision of resource centers. Technical aids are necessary to ensure a successful operation of the inclusive education system. Integrated approaches should be reinforced by the development of the support services at central and intermediate levels.

3. Special measures of support in schools in domestic legal systems

Domestic education law can include provisions on special measures of support or refer to standards and regulations that provide for measures of individual assistance, adaptation and support for pupils. Here are some examples from national law:

Albania	
Belarus	
Belgium	
Italy	
Lithuania	
Poland	
Russia	<i>Art. 79 of the Federal Education Act "Organization of receiving education by children with health disabilities" Under special conditions for receiving of the education by pupils with health disabilities there means... special educational programs and methods of teaching..., special teaching books and tutorials..., special technical means of training..., provision of assistant service..., ... provision of access to buildings... and other measures without which mastering the educational program by the pupils with health disabilities will be impossible or difficult.</i>

⁴⁶ UNESCO The Salamanca Statement and Framework For Action, 1994, p. 41, http://www.unesco.org/education/pdf/SALAMA_E.PDF

Chapter IV - Rights of children in education law

1. UN CRC: Aims of education and assistive measures for children with disabilities

Article 29 1(a) of the UN Convention on the rights of the child states that

the education of the child shall be directed to the development of the child's personality, talents and mental and physical abilities to their fullest potential;

Special provisions of the Convention are devoted to the rights of children with disabilities. Art.23 (1) reads:

1. States Parties recognize that a mentally or physically disabled child should enjoy a full and decent life, in conditions which ensure dignity, promote self-reliance and facilitate the child's active participation in the community.

Further on Art.23 (2) envisages the right of the child to care and assistance within the available amount of public resources:

2. States Parties recognize the right of the disabled child to special care and shall encourage and ensure the extension, subject to available resources, to the eligible child and those responsible for his or her care, of assistance for which application is made and which is appropriate to the child's condition and to the circumstances of the parents or others caring for the child.

Obligation to address the special needs of a disabled child, in particular in education, is stipulated in Art.23 (3) as follows:

3. Recognizing the special needs of a disabled child, assistance extended in accordance with paragraph 2 of the present article shall be provided free of charge, whenever possible, taking into account the financial resources of the parents or others caring for the child, and shall be designed to ensure that the disabled child has effective access to and receives education, training, health care services, rehabilitation services, preparation for employment and recreation opportunities in a manner conducive to the child's achieving the fullest possible social integration and individual development, including his or her cultural and spiritual development.

Obligations to ensure effective access to education and to guarantee that the child receives education are particularly remarkable here. The CRC Committee further specified that it is important that the child benefits from education.⁴⁷

The CRC Committee adds that a plan of action with regard to the implementation of these paragraphs is necessary; the plan which would ensure that the child and those adults who provide care for the child receive actually the care and assistance stipulated in Article 23.⁴⁸

Provisions of Art.29 (1) and Art.23 of the CRC are interconnected and the key words in these provisions are “receive education”, “appropriate assistance”, “development of the child’s personality; ... abilities to the fullest potential”.

⁴⁷ CRC/C/GC/9, para 14 (b)

⁴⁸ CRC/C/GC/9, para 13

Task for discussion

In some instances children (in particular children with severe and multiple disorders) are placed in care institutions or in a separate school class where they receive care. In your opinion, how care and education can work together for the child's best? How can we understand that care does not substitute education?

2. The principle of the best interests of the child

“The best interests of the child” is one of the core provisions of the Child’s Convention. Art.3 (1) of the CRC reads as follows:

In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.

It seems impossible to achieve common understanding of what is in the child’s best interests for so many opinions, cultural factors, family and social values influence the interpretation of this concept. And not less difficult is the question of what does it mean to take them as “a primary consideration”. The UN Committee on the rights of the child points out that “the concept of the child's best interests is complex and its content must be determined on a case-by-case basis... For individual decisions, the child's best interests must be assessed and determined in light of the specific circumstances of the particular child. For collective decisions – such as by the legislator –, the best interests of children in general must be assessed and determined in light of the circumstances of the particular group and/or children in general.”⁴⁹

It is commonly acknowledged and supported by the Committee’s interpretation of the Convention that children’s rights stipulated in the Convention is a prerequisite and the basis for interpreting of what is in the best interests of the child in a certain circumstances. For children in a vulnerable situation (such as disability), also the rights stipulated in other human rights documents (Convention on the rights of persons with disabilities in particular) are such a basis.

The Committee points out that

*An important element to consider is the child’s situation of vulnerability, such as disability, belonging to a minority group, being a refugee or asylum seeker, victim of abuse, living in a street situation, etc. The purpose of determining the best interests of a child or children in a vulnerable situation should not only be in relation to the full enjoyment of all the rights provided for in the Convention, but also with regard to other human rights norms related to these specific situations, such as those covered in the Convention on the Rights of Persons with Disabilities, the Convention relating to the Status of Refugees, among others.*⁵⁰

Questions and tasks for discussion

⁴⁹ Committee on the Rights of the Child, general comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration (art. 3, para. 1), CRC/C/GC/14, para 32

⁵⁰ Ibid. CRC/C/GC/14, para 75

In some legal systems it is stipulated that parents have the right to decide whether their child shall receive education in a regular school or a special (separate) school for children with a specific kind of disability, or for children belonging to a particular minority groups, etc. In your opinion, how can one assess whether the decision is in the best interests of the child?

Suggest what circumstances should be taken into account when making such decisions and substantiate your views by analysis of provisions of the Convention on the Rights of the Child, Convention on the Rights of Persons with Disabilities, the Committees' General Comments of Conventions, the Convention Relating to the Status of Refugees or other international human rights document.

3. Participation rights (right to be heard)

Article 12 of the Convention on the Rights of the Child states as follows

1. States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.

2. For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.

The right of children to be heard and their views to be respected and taken into account is one of the basic principles of the Convention on the Rights of the Child. It is important that children with special needs and disabilities be heard in different procedures, specifically those concerning their right to education and special measures of accommodation and adaptation.

The Committee on the Rights of the Child points out that

The fact that the child is very young or in a vulnerable situation (e.g. has a disability, belongs to a minority group, is a migrant, etc.) does not deprive him or her of the right to express his or her views, nor reduces the weight given to the child's views in determining his or her best interests. The adoption of specific measures to guarantee the exercise of equal rights for children in such situations must be subject to an individual assessment which assures a role to the children themselves in the decision-making process, and the provision of reasonable accommodation and support, where necessary, to ensure their full participation in the assessment of their best interests.⁵¹

While it is essential that “children should be represented in various bodies such as parliament, committees and other forums where they may voice views and participate in the making of decisions that affect them as children in general and as children with disabilities specifically”⁵² the Committee points out that

spiritual, emotional and cultural development and well-being of children with disabilities are very often overlooked. Their participation in events and activities

⁵¹ Committee on the Rights of the Child, general comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration (art. 3, para. 1), CRC/C/GC/14/, para 54

⁵² Committee on the Rights of the Child, general comment No. 9 “The rights of children with disabilities”, CRC/C/GC/9, para 32

*catering to these essential aspects of any child's life is either totally lacking or minimal. Furthermore, when their participation is invited, it is often limited to activities specifically designed for and targeted at children with disabilities. This practice only leads to further marginalization of children with disabilities and increases their feelings of isolation. Programmes and activities designed for the child's cultural development and spiritual well-being should involve and cater to both children with and without disabilities in an integrated and participatory fashion.*⁵³

Questions and tasks for discussion

In your legal system and education practice, what kind of rights do children have? Does the right to be heard apply in the process of making and implementing decisions on special measures of support in education?

How the child's participation can influence the way the measures of support are designed and fulfilled?

Chapter V - Justiciability of the right to inclusive education

1. International and national legal mechanisms of protection of the right to education for persons with special needs and disabilities

The term “justiciability” may be interpreted as an ability of a right to be protected (in case of violation of this right) by means of bringing the case for consideration before the court or a similar to the court body authorized to make enforceable decisions on just satisfaction.

*“Justiciability refers to the amenability of an issue to be adjudicated upon in judicial or quasi-judicial (such as UN treaty bodies and the European Committee of social rights) fora. A justiciable right to education means that when this right is violated, the right-holder can take her claim before an independent and impartial body, and if the claim is upheld, be granted a remedy, which can then be enforced (International Commission of Jurists 2008:1).”*⁵⁴

The following cases represent case-law which made a remarkable change in legal systems and education law both internationally and on national levels in different countries in relation to the right to education of children with special needs and disabilities. They are named “landmark” decisions owing to their influence upon law and the views of lawmakers and administrators, as well as society in general, changing our views and attitudes towards the meaning of “the universal right to education” or “the education for all”

2. Landmark decisions for the right to education of students with disabilities and special needs

2.1 Autism Europe v. France

Summary of the case

⁵³ Committee on the Rights of the Child, general comment No. 9 “The rights of children with disabilities”, CRC/C/GC/9, para 33

⁵⁴ Right to Education Project, <http://www.right-to-education.org/issue-page/justiciability>

Children with specific needs (autism spectrum disorders) should not be deprived of measures of support within the system of education. Deprivation of one group of children with special needs compared to other children with disabilities constitutes violation of the provisions of the European Social Charter, and do not comply with the principle of equality and non-discrimination.

*The case was considered by the European Committee on Social Rights.*⁵⁵

The Applicant - The International Association Autism-Europe is an international organization governed by Belgian law. Autism-Europe has consultative status with the Council of Europe and is on the list of international non-governmental organizations authorized to lodge collective complaints. According to its statutes, the association's purpose is "to improve life for everyone affected by autism".

In the given case the Applicant represented persons with autism in France. The Applicant alleged that "France is failing to satisfactorily apply its obligations under Articles 15§1 and 17§1 of Part II of the Revised European Social Charter because children and adults with autism do not and are not likely to effectively exercise, in sufficient numbers and to an adequate standard, their right to education in mainstream schooling or through adequately supported placements in specialised institutions that offer education and related services;"

The complainant stated that the implementation of the provisions of the national Education Act were not *de facto* in the full compliance with the provisions of the revised European social Charter (Articles 15 and 17), in particular were not supported by the adequate resources (in both quantitative and qualitative sense). The Applicant argued additionally that "the mainstreaming of autistic children and young people is still the exception rather than the rule and, even when it occurs, it is confined to an average of just a few hours per week", and measures aimed at integration were insufficient.

The government of France acknowledged that the measures taken to provide special education for children with autism had fallen short of the real necessity. However, the approach chosen by France was not the provision of specialized services for any category of disabled persons; the services were not provided directly for persons with autism but in general for persons with disabilities which implied their reception in multipurpose establishments. The Government rejected the argument of insufficient measures of integration, arguing that mainstreaming was a priority, both legally and practically (in relevant regulations and budget allocations). The Government argued that "full-time or part-time integration may occur individually or collectively through the creation of special classes".

The Committee concluded by the majority of votes that situation constitutes a violation of Articles 15§1 and 17§1 of the Revised European social Charter "on the grounds that:

- whether a broad or narrow definition of autism was adopted, the proportion of children with autism being educated in either general or specialist schools was extremely low;
- there was a chronic shortage of care and support facilities for autistic adults."

(Decision on the Merits adopted on the November 4, 2003).

⁵⁵ Complaint No. 13/2002, Decision on the Merits 4 November 2003 <http://hudoc.esc.coe.int/>

2.2 D.H. vs the Czech Republic

Summary of the case

When designing measures of social integration of persons belonging to an ethnic minority (Roma children) and providing education to them the Government shall analyze all circumstances concerning the specific minority group (in particular a long history of prejudices and discrimination) and monitor whether they actually have access to education on an equal footing with others and are not deprived of opportunities to access quality education

Case of D.H. and others v. the Czech Republic, appl. 57325/00, considered by the European Court of Human Rights (ECtHR), Section Chamber judgment of 7 February, 2006; Grand Chamber judgment of 13 November, 2007

In 2000 a group of 13 nationals of the Czech Republic of Roma origin filed a complaint with the European Court of human rights (ECtHR). Applicants stated that they were subjected to discrimination in respect of the right to education on account of their ethnic origin.⁵⁶ The circumstances of the case revealed that the applicants were placed in special schools for children with learning disabilities. The decision on placement was made on the ground of the test measurement of intellectual capacity of the children. The applicants' parents gave consent to placement of the children in the special school. Seemingly neutral testing applied in the examination of the children's learning capabilities resulted, however, in the fact that a disproportionately large number of the students of special schools for those who had light mental disability appeared to be Roma children.

The applicants alleged that the tests were not objective as far as they were devised for children who spoke the Czech language as their mother tongue, and that the tests did not take into account cultural and linguistic specificities of Roma children and their poor command of the Czech language. Besides, the prior learning experience of the children was disregarded and the testing settings were new and unfamiliar for these children, so that they were not able to demonstrate their actual skills. They argued that the assessing experts were provided with too much discretion which led to the placement in special schools for reasons other than intellectual deficiencies in a number of cases. Besides, the applicants stated that the parental choices and consents could not override the child's right of non-discrimination. They alleged that the margin of appreciation for the State Party with regard to placement of children in separate school settings should be restricted.

On the contrary, the Government considered that the parents' consent was the decisive factor in accordance with the provisions of the European Convention on Protection of Human Rights and Fundamental Freedoms (ECHR). The Government mentioned that "...the state allocated twice the level of resources to special schools as to ordinary schools and that the domestic authorities had made considerable efforts to deal with the complex issue of the education of Roma children."⁵⁷

⁵⁶ Case of D.H. and others v. the Czech Republic, appl. 57325/00, Section Chamber judgment of 7 February, 2006; Grand Chamber judgment of 13 November, 2007.

⁵⁷ Ibid. para 157.

The practice of inappropriate application of mental ability tests to children with different ethnic background was not a specifically Czech phenomenon. Results of IQ tests are a largely used criterion in assessment of special needs worldwide.⁵⁸ But in the D.H. case the argument that public policy should be more sensitive to the question of education of Roma children became more influential as it was supported by the references to the documents of the Council of Europe.⁵⁹

“Unconscious racial bias on the part of school authorities, large resources inequalities, an unjustifiable reliance on IQ and other evaluation tools, educators’ inappropriate responses to the pressures of high-stakes testing...” – were mentioned as factors resulted in racial discrimination. (The D.H. case, Grand Chamber judgment, 2007, para 44).

In the final judgment the Court concluded by the majority of votes that there was a violation of provisions of the European Convention on Human Rights and Fundamental Freedoms (Article 14 - the right of non-discrimination and Article 2 of Protocol No. 1 to the Convention – the right to education).

P.S. Similar circumstances were brought before the Court in the cases of *Sampanis v. Greece*,⁶⁰ *Oršuš and others v. Croatia*,⁶¹ and *Horvath and Kiss v. Hungary*.⁶² In the *Oršuš* case Roma children studied in regular schools but were placed in separate Roma-only classes on the grounds of their poor command of Croatian language. Their language skills, as expected, would be improved in special arrangements (adapted curriculum in particular). In the *Horvath and Kiss* case children were to pass the IQ-test, the results of which grounded their placement in special (remedial) schools. While expert opinion was the basic factor in the placement decisions, other circumstances (like the cause of the poor performance of the tests, the discrepancies between the results of the different tests, the causes of the developmental delay and the parents’ views) were not taken into account by the expert panel which made the placement decisions.

The Court’s approach is generally based upon the assumption that the state has a certain margin of appreciation with regard to different treatment where it is necessary to correct actual inequalities.⁶³ It is in the state’s discretion to assess and apply measures in order to address those inequalities. It is in the Court’s competence to assess whether the measures

⁵⁸ Researches in many countries find the correspondence between IQ test results and a disproportionate number of children with different ethnic background in the schools and classes for children with mental disabilities. An over-placement of children of West Indian origin in schools for “the mildly educationally subnormal” within the school system was a matter of concern in Great Britain (See, Tomlinson, Sally (1982). *A Sociology of Special Education*. Routledge & Kegan Paul Ltd., 1982). Norwegian researchers find that the wrong use of tests, particularly the IQ-tests, leads to detrimental effect for children from ethnic minorities and bilingual children related to segregation practices which are supported by the tradition to diagnose children with the focus on deficiencies. (See, Heen Wold, Astri (2006). “Kan for lite norsk, stempler som dum” – pedagogisk-psykologisk tjeneste og sakkyndige vurderinger av barn fra språklige minoriteter. *Tidsskrift for Norsk Psykologforening*, Vol 43, nummer 12, 2006, side 1320-1329). According to research African American children in the USA are over-represented within the category of mentally retarded in 38 states. See, Peters, Susan J. (2008) *Inequalities in Education for People with Disabilities*. In: *Inequality in Education: Comparative and International Perspectives*. Edited by Donald B. Holsinger and W. James Jacob (pp. 149-171), p. 152-153).

⁵⁹ In particular, the Recommendation No. R (2000) of the Committee of Ministers and the Recommendation No. 1203 (1993) of the Parliamentary Assembly on the situation of the Roma in Europe

⁶⁰ *Sampanis v. Greece*, appl. 32526/05, judgment of 06 June 2008 (available in French and Italian only).

⁶¹ *Oršuš and others v. Croatia*, appl. No. 15766/03, Grand Chamber judgment of 16 March 2010

⁶² *Horvath and Kiss v. Hungary*, appl. No. 11146/11, judgment 29 January 2013

⁶³ *D.H. and others v. the Czech Republic*, Grand Chamber para 175; *Oršuš and others v. Croatia*, para 149

taken pursued a legitimate aim and whether they were objectively and reasonably justified. The aim of the measures might be entirely legitimate, based on right principles and good intentions, but when applied in the specific circumstances of the case those measures might indirectly lead to disproportionate effect for a certain group of students.

Analysis of the arguments brought in the abovementioned cases results in the following conclusion: no matter how wide the margin of appreciation might be given to the state the measures undertaken should not lead to repeated and sustained segregation, deprivation of opportunities and participation for a particular social group. With regard to the acknowledged history of discrimination the Court formulated a specific positive obligation of State Parties to take measures “to avoid the perpetuation of past discrimination or discriminative practices disguised in allegedly neutral tests”.⁶⁴

2.3 O’Donoghue case (Ireland)

Summary of the case

A child with severe mental disability shall not be deprived of the right to education and access to educational services available for other less disabled children (High Court of Ireland, O’Donoghue v. Minister for Health [1993] IEHC 2; [1996] 2 IR 20 (27th May, 1993))

2.4. Finney case (Australia)

Summary of the case

Rejection to enroll a child with disability to a school constitutes discrimination on the grounds of disability (Finney v Hills Grammar School, Human rights and equal opportunity commission, Australia, HREOCA 14 (20 July 1999), Federal Court of Australia New South Wales District Registry N794 of 1999)

Chapter VI - Additional sources

Ethical guidelines for teachers

List of international human rights law

Useful sources and links

Literature

Beiter, Klaus Dieter. The protection of the right to education by international law: including a systematic analysis of Article 13 of the International Covenant on Economic, Social, and Cultural Rights, Koninklijke Brill NV, Leiden, The Netherlands, 2006.

⁶⁴ Horvath and Kiss v. Hungary, para 116-119

UNESCO Guidelines for Inclusion: Ensuring Access to Education for All, 2005, <http://unesdoc.unesco.org/images/0014/001402/140224e.pdf>

UNESCO Towards Inclusive Education for Children with Disabilities: A Guideline, 2009, <http://www.uis.unesco.org/Library/Documents/disabchild09-en.pdf>

Annex I - Types of special needs

This paragraph is based on Belgian context and the following description of special needs applies specifically in inclusive education.

1. Children and young people with emotional and behavioral problems⁶⁵

In the literature we find additional to the terms 'behavioral and emotional problems': 'behavioral disorder' 'problematic behavior', 'emotional problems', 'child psychiatric disorders' and more. The description "children with behavioral and emotional problems" is used in this work as an overarching descriptive term for all children that show visible unusual behavior and / or emotions. Children with physical complaints that cannot be classified by a physical illness are also included in this description.

Within the multitude of behavioral and emotional problems we distinguish moderate, temporary problems that a child displays as a response to new situations (e.g. tantrums as a response to the birth of a sibling), behaviors that only occur in certain situations (refusing to obey a certain teacher), age /age phase related behavior (e.g. the rebellion phase during puberty) and serious problems, as resistant defiant behavior, attention deficit disorders (ADHD), mood disorder and more⁶⁶.

2. Children with a learning disability ⁶⁷

The term 'learning disabilities' refers to problems with learning. Yet, children usually have no difficulty with learning in the broadest sense of the word (master new skills, behaviors and knowledge)⁶⁸. How one learns and whether or not this actually happens effectively depends on the possibilities (and limitations) of a person.

⁶⁵ Grietens, Bosmans & Baeyens (2014)

⁶⁶ Verhulst & Verheij (2000)

⁶⁷ Ghesquière & Ruijsenaars (2014)

⁶⁸ Van Parreren (1969)

Learning disabilities can be described on the base of scholastic skills that students do not master. We speak of reading problems, spelling problems and calculation problems. We also distinguish primary and secondary learning disorders. Primary (independent) learning disabilities are the result of specific problems that manifest themselves in learning academic skills without having slowed down other areas of development. Primary learning disabilities: dyslexia, dysgraphia and Dyscalculia. With Secondary learning disabilities men aim to emphasize that the learning problem arose resulting from a deficiency in the environment or through another problem. It may be related to the environment of the child (the family, the school, or the cultural setting), or it can arise with restrictions that the child already has (e.g. physical disabilities and socio-emotional problems) which generally has negative effects on learning.

3. Children and young people with intellectual disabilities⁶⁹

Intellectual disability is a descriptive term indicating a certain manner of malfunction to a person's daily life. To suffice three criteria's must be met. To start with significant impairment in intellectual functioning: this refers to general mental function and broad ability to understand the environment with skills such as reasoning, planning, finding solutions, abstract thinking, being able to understand complex ideas, being able to learn from instruction and experience, being able to judge and having practical insight⁷⁰. Together with a limitation in intellectual reasoning, the second criterion is a significant restriction in adaptive skills. Adaptive behavior refers to the extent to which a person conforms to the requirements and expectations of being independent and social responsible, by a certain age and in a certain cultural setting⁷¹. Shalock et al.2010 discusses three groups of skills they need to master: - conceptual skills such as language development, reading, writing, understanding money matters, time and numbers. - Social skills, such as social responsibility, not being naive, problem solving in a social context, presence of self-esteem. - Practical skills, such as work related skills, how to follow procedures, use money, transport, health care and the use of different communication mediums. The third criterion is according to Maes (2014) that both the intellectual restrictions as the restrictions in adaptive skills must be clear in the different maturation phases. This applies to the period between birth until the person reaches the age of 18.

Overall, we can use this definition:

A learning disability entails restriction in reasoning as well as restriction in adaptive operation at conceptual, societal, and practical level. The limitation arises during the maturation period⁷².

This definition also fits into the social model, the vision of among others the International classification of functioning, Disability and health (ICF) and the UN convention on Rights of Persons with Disabilities is put forward: a disability is no longer observed as a feature of an individual, but as an adjustment problem between the person with a disability and society. People are 'disabled' because of the way society is organized. A disability means that people encounter obstacles when it comes to participating in society on a similar manner as others. It

⁶⁹ Maes (2014)

⁷⁰ American Psychiatric Association (2013) and Shalock et al. (2010)

⁷¹ Grossman (1983)

⁷² American Psychiatric Association (2013)

is the responsibility of society as a whole to improve the environment so that all people can participate fully in all spheres of social life. People with disabilities are full citizens with equal rights.

The classification is based on the intelligence level on the one hand and the level of adaptive behavior on the other hand:

	IQ-score	Adaptive behavior
Minor intellectual disability	IQ: +/- 55 tot 70	Vineland – Z: 6-9
Moderate intellectual disability	IQ: +/- 40 tot 55	Vineland-Z: 5-6
Severe intellectual disability	IQ: +/- 25 tot 40	Vineland-Z: 5
Major intellectual disability	IQ: < 25	Vineland-Z: 3-4

4. Children and young people with autism spectrum disorder⁷³

Autism spectrum disorder is a neurobiological maturation disorder characterized by persistent problems in social communication and social interaction combined with limited rehearsals pattern of behavior, interests or activities⁷⁴:

The first criteria discuss the persistent deficit in social communication skills and social interaction in different circumstances. For example, a deficiency in non-verbal communication in terms of social interaction (eye contact, lack of understanding gestures, body language ...), lack of social reciprocity (lack of initiative, social interaction...) and a deficiency in establishing, maintaining and understanding relationships (to adapt to different social settings...). The second criterion discusses the limited pattern of behavior, interests and activities. For example, repetitive or stereotyped movements, resistance to change, very limited or fixed interest and - hyper activity or unusual interest in audio visual aspects of the environment. The third criteria describes that the symptoms have to be already present at an early age. The fourth criteria indicate that that the symptoms of autism significantly cause limitations in social or occupational functions. The last criteria show that the above problems cannot be explained better by learning difficulties or global development problems.

The term 'spectrum' indicates that the core problems can establish themselves in a diverse manner. Autism has in fact many faces: Autism affects severely mentally limited and contact repellent children as well as gifted, verbally strong and seemingly very social teens. Examples of disorders that belong to this group: autistic disorder and Asperger disorder.

5. Children and young people with hearing disorders⁷⁵

In most European countries hearing disorders are the most common physical disorder⁷⁶. In 2012, the World Health Organization estimated that 360 million people worldwide have a permanent hearing disorder (328 million adult versus 32 million children), what is to 5.3% of

⁷³ Vermeulen & Noens (2014)

⁷⁴ American Psychiatric Association (2013)

⁷⁵ Loots & De Sloovere (2014)

⁷⁶ Davis (1989) & Parker et al. (2000)

the world population. The potential impact of this restriction on the personal development, psychological wellbeing and social life of the nations involved are such that this is a serious health problem⁷⁷.

Sounds

Sound consists of vibrations of air particles as longitudinal waves move through the air. A sound wave can be described in terms, such as amplitude and frequency. The amplitude determines the volume or intensity in decibels (dB). The frequency of the sound wave, the number of vibrations per second and is expressed in Hertz (Hz). Hearing loss is thus determined on the basis of the volume level and the sound frequency.

Sound frequency is measured by different pure tones (125 Hz, 250 Hz, 500 Hz, 1000 Hz, 2000 Hz, 4000 Hz and 8000 Hz). In normal circumstances, the human ear can hear sounds between 20 and 20,000 Hz. Speaking mainly covers the range between 500 and 4000 Hz. The higher the frequency, the higher the tones we hear. Almost all the sounds we hear are combinations of different frequencies.

For calculating the degree of hearing loss, there are different modes of operation and formulas. The Fletcher-index is the most widely used of formula wherein there is an arithmetic average is calculated which reduced a certain decibel.

The Office International d'audio phonology distinguishes six categories of hearing loss:

Klasse	Average
I Normal or subnormal	0-20 dB
II Light hearing loss	21-40 dB
III Moderate hearing loss	41-70 dB
IV Heavy hearing loss	71-90 dB
V Deafness	
First grade	91-100 dB
Second degree	101-110 dB
Third degree	111-119 dB
VI Total deafness – Cophose	120 dB

0 dB is the reference point

6. Children and young people with visual impairments⁷⁸

Visual impairment is the functional limitation of the eye or eyes or the vision system⁷⁹:

- Loss of visual acuity and inability of the person to see objects as clearly as a healthy person
- Loss of visual field meaning inability of an individual to see as wide an area as the average person without moving the eyes or turning the head.

⁷⁷ Parving (1999) & Streppel et al. (2000)

⁷⁸ Looijestijn (2014)

⁷⁹ Medical.net (2017)

- Photophobia – inability to look at light
- Diplopia – double vision
- Visual distortion or distortion of images
- Visual perceptual difficulties or difficulties of perception and
- Blindness

7. Children and young people with physical disabilities⁸⁰

Persons with physical limitations, they are identified by a temporary, permanent or recidivated barriers. Their condition interferes with the opportunity to use the body. The obstacles are rooted in neurological, orthopedic, muscular, metabolic disorders or trauma.

8. Sick children and adolescents⁸¹

The term ‘sick’ is defined as a functional disorder or non-normal course of processes in the body or parts of it. These disturbances can be invisible. Often, however, the process is accompanied by symptoms that indicate the abnormal state clearly.

Certain children are so sick that they can’t stay at home for a while. They should go to the hospital when the medication can’t be administered at home. This can influence their school program as well.

Diseases lasting at least three months are called chronic diseases. The term embraces a wide variety of different states: Chronic diseases range in severity, duration, source, appearance, progressiveness, prognosis, functional limitations and more. Example of chronic diseases: cancer, diabetes, obesity, epilepsy and chronic kidney problems.

A distinction can be made between acute and planned hospital admissions. In an emergency admission, the child is suddenly hospitalized following an accident, an unforeseen aggravation of a known condition or an acute illness. Due to the acute nature of these recordings, the child may be little or unprepared for the recording. With scheduled visits the emotional state and behavior of the child can be different because of the preparation.

9. Refugee Children and young people⁸²

In our society we are increasingly in contact with people that have fled their country of origin. Children and adolescents come alone or with their family. Their complex, often traumatic migration story and differential cultural grant them a lot of questions. What does it mean as a young refugee, alone or with his family to leave their homeland and build a new future in a new country? What are the consequences of the trauma and loss experiences? How can we support them?

In recent decades the interest from the sciences is growing. Researchers want to know more about the psychological problems of young refugees. A diverse spectrum of behavioral and emotional problems is visible within this target group: Sleep problems, nightmares,

⁸⁰ Soyez & Vanderfaillie (2014)

⁸¹ Vanderfaillie & Petry (2014)

⁸² Grietens (2014)

concentration problems, withdrawn and lethargic behavior, eating disorder, aggressive behavior, psychosomatic symptoms and hyperactive behavior are common with refugee children and young people⁸³.

Besides these numerous data on the increased incidence of psychological dysfunction, refugee children and young people are reported also having age-specific behaviors and psychosocial problems. In school the concentration problems, psychosomatic disorder and repetitive replay of endangered events are common. Adolescents can have a problematic identity development. They doubt their own abilities, doubt building a future in the host country and are trying to find a balance between a broken past and an open future where cultural values and gender roles may vary.

⁸³ Monthomery (2008)