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How Inclusive is the Right to Inclusive Education? An Assessment of the UN Convention on the Rights of Persons with Disabilities' Concluding Observations

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How Inclusive is the Right to Inclusive Education? An Assessment of the UN Convention on the Rights of Persons with Disabilities' Concluding Observations

Across jurisdictions, what does and what does not constitute inclusive education varies. The adoption of the United Nations Convention on the Rights of Persons with Disabilities (CRPD) in 2006 provides a critical opportunity to untangle the elasticity of 'inclusive education'. Using Article 24 CRPD as the normative framework for inclusive education and drawing on a content and critical policy analysis of the Concluding Observations of all countries examined by the CRPD Committee to date, this article systematically explores the emerging trends and foci of the right to inclusive education across the globe and examines their implications for discourse and practice. It will be argued that while the right to inclusive education has become more focused, persistent concerns abound that must be addressed for Article 24 to be effectively realised. In particular, voice must be given to children with the most complex and profound disabilities and for whom the practicalities of inclusive education are more difficult to achieve. Greater focus is also required in achieving a rights-compliant transition from segregated to inclusive education settings that does not, in the process of doing so, rescind the rights of the minority of children with the most profound disabilities currently in segregated schools. These issues need to be explicitly confronted so that the international disability rights framework promotes inclusive education for all children with disabilities and not only for those with the 'right' kinds of disabilities.

Keywords: inclusive education, disability, rights, CRPD, transition, segregation, critical policy analysis

Introduction

The seemingly innocuous phrase 'inclusive education' belies its internal controversy. Across jurisdictions, legislation and policy on what does and what does not constitute inclusive education varies. The contestable nature of 'inclusion' across time, space and contexts is

indicative of its chameleon-like characteristics. Contrary to what might ordinarily be expected with definitions or concepts, the term ‘inclusion’ has been attached to practices that would appear to be at odds with its intended outcomes (Byrne 2013; Slee 2018, 2013, 2011; Armstrong, Armstrong and Spandagou 2010). Attempts to establish the boundaries of inclusion have been problematic and, at times, the inclusion umbrella has become so broad and all encompassing, that it risks becoming a new way to describe and legitimise age old norms of mere integration and/or segregation within mainstream settings (Byrne 2013; Hardy and Woodcock 2015).

National educational policy is being increasingly influenced by international human rights bodies such as the United Nations (UN). The language of human rights has become ever more significant as countries who have signed up to human rights treaties agree to adhere to, implement, and report on particular standards. The adoption of the United Nations Convention on the Rights of Persons with Disabilities (CRPD) in 2006 is an opportunity to confront concerns surrounding the elasticity of ‘inclusive education’. Article 24 of the CRPD requires States parties to ‘ensure an inclusive education system at all levels’. This is not the first time that inclusive education has featured in international law. The UNESCO Salamanca Statement and Framework for Action on Special Needs Education (1994) called upon governments to adopt the principle of inclusive education, enrolling all children in regular schools, ‘unless there are compelling reasons for doing otherwise’ (Salamanca Statement 1994, section 3). However, the Statement and its Framework for Action interchangeably uses the terms ‘integration’ and ‘inclusion’, and refers to the ‘special needs’ of children with disabilities. Nor is the Statement legally binding on its members. Article 24 of the CRPD is the first time reference has been explicitly made to *inclusive* education in a treaty text. It also has a much stronger basis than the Salamanca Statement with its periodic reporting and monitoring mechanisms in the form of Concluding Observations issued by the Committee on

the Rights of Persons with Disabilities ('the Committee') on how well States parties are meeting their obligations and what they need to improve on. The resulting Concluding Observations provide unique global insight on emergent educational priorities, policies and practices. While there is an emerging body of work that explores the text of Article 24 CRPD (for example, de Beco 2018, 2014; Kayess 2019), there is a distinct absence of work that uses the Concluding Observations as a body of data to systematically explore how this right is being translated into policy across multiple sites, what it looks like in practice, and the extent to which such actions are construed by the Committee as 'rights-based' or compliant with Article 24 (but see, for example, Ferri 2018 in the context of Italy). It is the explicit interchange between the Committee and States parties on the form and content of the 'right' to 'inclusive education' that is the focus of this article.

Using Article 24 CRPD as the normative framework for inclusive education and drawing on a content and critical policy analysis of Concluding Observations on the 72 countries that have been examined by the CRPD Committee to date, this article will explore the emerging trends and foci of the right to inclusive education at international level and their implications for discourse and practice. Specifically, it will examine (i) 'what is happening': that is, the perceived state of the right to inclusive education across countries, (ii) 'what should be happening': expectations from the Committee on what this right should look like and how it should be implemented; and (iii) the persistency of ongoing issues across countries. In responding to State practice, the Committee is essentially expanding on the meaning of Article 24 and developing its normative framework. By using the Concluding Observations for this task, we can begin to systematically identify the parameters of the international right to inclusive education as perceived by the UN Committee and its likely direction. This is significant since almost 200 countries have agreed to implement, monitor and report on it. Similarly, we can also identify the gaps – are there particular areas that we

might expect to be prioritised that are absent, and are the experiences of *all* children and young people with disabilities being equally acknowledged? Such an approach to policy analysis must, however, be problematised. Country reports and Concluding Observations are essentially social products and inherently political. They are designed for a particular purpose and cannot therefore be regarded as impartial or a factual account of what is happening on the ground. This in itself however, generates critical insight into the operationalisation of human rights norms and the ways in which doxic ideas (Bourdieu 2000); in other words, taken for granted or common beliefs, relating to inclusion are reproduced or challenged.

The Fundamentals of the Right to Inclusive Education under Article 24 CRPD

Article 24 of the CRPD focuses solely on education and requires States parties to ensure an ‘inclusive education system at all levels’. The aims of an inclusive education system as set out are threefold; firstly, the full development of human potential and sense of dignity and self-worth, and the strengthening of respect for human rights, fundamental freedoms and human diversity; the development by people with disabilities of their personality, talents and creativity, as well as their mental and physical abilities, to their fullest potential; and to enable people with disabilities to participate effectively in a free society (Article 24(1)). States are obliged to ensure that people with disabilities are not excluded from the general education system on the basis of disability, that they are able to access an inclusive, quality and free primary and secondary education on an equal basis with others in the communities in which they live, and that they are provided with support to facilitate their effective education. The rest of Article 24 sets out entitlements in relation to the use of alternative means of learning and formats of communication including the use of Braille, sign language and promotion of the linguistic identity of the deaf community through education. The need for

teachers to receive training in disability awareness, educational techniques and materials to support students with disabilities is also specified.

These core rights have been expanded upon by the Committee in a substantive general comment on the right to inclusive education (UN 2016). The twenty-one-page document is significant for the clear message it conveys on the scope and content of ‘inclusive education’ and educational placement. The general comment takes, as its starting point, the view that inclusive education is ‘central to achieving high-quality education for all learners, including those with disabilities, and for the development of inclusive, peaceful and fair societies’ (UN 2016, 1). In so doing it acknowledges the progress that has been made in the development of international legislation and policies on inclusion, but notes that despite this, profound challenges persist, evidenced by the significant numbers of people with disabilities who continue to be denied the right to education at all, or where this is provided, that it is done so in primarily segregated settings. In establishing the characteristics of inclusive education, the general comment emphasises that:

Inclusion involves a process of systemic reform embodying changes and modifications in content, teaching methods, approaches, structures and strategies in education to overcome barriers with a vision serving to provide all students of the relevant age range with an equitable and participatory learning experience and the environment that best corresponds to their requirements and preferences. Placing students with disabilities within mainstream classes without accompanying structural changes to, for example, organisation, curriculum and teaching and learning strategies, does not constitute inclusion. (UN 2016, 3)

The core features of inclusive education are identified by the Committee as necessitating:

- A ‘whole systems’ approach
- A ‘whole educational environment
- A ‘whole person’ approach
- Supported teachers
- Respect for and value of diversity
- A learning-friendly environment
- Effective transitions
- Recognition of partnerships
- Monitoring

(UN 2016, 4-5)

Furthermore, the Committee draws on the recommendation of the Committee on Economic, Social and Cultural Rights that, to fulfil the right to inclusive education, the education system must comprise four interrelated features:

Availability: Education must be available to people with disabilities at all levels.

Accessibility: Educational institutions and programmes must be accessible to everyone, without discrimination, including buildings, information and communication tools, the curriculum, educational materials, teaching methods, assessments and language and support services, with a particular focus on universal design.

Acceptability: The form and substance of education provided must be acceptable to all and respect the requirements, cultures, views and languages of people with disabilities.

Adaptability: The education environment should be adaptable for people with disabilities.

People with disabilities should be able to attend primary and secondary schools in the communities where they live and include accessible transportation. People with disabilities must be provided with reasonable accommodation to they can have access to education on an equal basis with others. (UN 2016, 6-8)

The implication throughout the general comment is that the best form of education is in the mainstream system rather than in special or segregated placements. The document makes two direct comments to this end. Firstly, it notes that since the right to inclusive education is, as per international law, an economic, social and cultural right, it is subject to ‘progressive realisation’. In other words, States parties have a ‘specific and continuing obligation to move as expeditiously and effectively as possible towards the full realization of Article 24’ (UN 2016, 11). Here, the Committee specifies that progressive realization as required, is ‘not compatible with sustaining two systems of education: a mainstream education system and a special/segregated education system’ (ibid). Further, the Committee urges States parties to ‘transfer resources from segregated to inclusive environments’ (UN 2016, 19). Thus we would expect countries that have ratified the CRPD to be taking these principles on board and to be progressively moving towards a completely inclusive school system. Beyond that however, the Committee does not provide further detail on precisely how these actions can be achieved, what an appropriate timescale should be or how progress should be monitored. This is not surprising since each country will have different systems, starting points, and resources, and so flexibility and a margin of discretion is required (Vienna Law of Treaties 1969).

Article 24 of the CRPD and its general comment is the most comprehensive international policy in existence on inclusive education. As a legally binding instrument on those countries who have ratified it, the CRPD acts as both a moral and legal guide to the expected normative standards on inclusion worldwide.¹ This is supported by the Committee's periodic examination of each State party in accordance with Article 35. Examining each State party's performance under all Articles, and, for the purpose of this paper, Article 24 specifically, allows for an assessment of how effectively the right to inclusive education is being realised in practice. It provides the Committee with an opportunity to assess practice against its normative standards, to highlight what is working well, and to recommend changes in areas that may be perceived as contrary to inclusion. Examining these Concluding Observations over a period of time, allows us as researchers to ascertain emerging trends, patterns and themes. For example, are there countries which have been commended for having particularly good practice? Are there areas that are being consistently highlighted as being in need of urgent improvement? Does the Committee explore inclusive education for children and young people with disabilities generally or is it able to distinguish between impairment groups? And, how challenging and/or realistic is the Committee's interpretation of the right to inclusive education?

A Cautionary Note: The Importance of Critical Policy Analysis

In engaging with human rights discourse specifically via the medium of Concluding Observations, we must be mindful of the hidden relations and subtleties of power that underpin them. The CRPD, as a form of 'soft law' and resultant Concluding Observations can be usefully examined via the lens of critical policy analysis. Critical policy analysis is a vital

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¹ It should be noted that General Comments are not in themselves legally binding but are a treaty body's interpretation of particular treaty provisions, thematic issues or its methods of work.

tool for questioning structures and systems (Diem et al 2014). It allows us to examine the key players in the policy production, implementation and monitoring process, the space between policy rhetoric and practiced reality, and the ways in which particular forms of knowledge become legitimised (Diem et al 2014). Significantly, critical policy analysis allows us to uncover the ‘white spaces’ (Diem et al 2014), that is, what is not there that should be there, and the extent to which the voices of those not traditionally heard in policy processes are being represented. As such we are interested both in what *is* going on, but also what *is not* going on.

Human rights discourse is not value free but has emerged as a global language giving voice to the struggles of social justice (Wolfsteller and Gregg 2017). Just as education is understood as a site of struggles over authority, power and identity and ‘indeed over both the very meaning of being educated and who should control it’ (Apple 2018), so too can Concluding Observations on Article 24 be understood as a site of struggle over the meaning of inclusive education in a global context and its legitimation. In assessing State party progress against Article 24, the Committee is itself drawing on its own ideologies around inclusive education and ultimately seeks to influence the culture and practices of wider society in this regard, contributing to international doxic knowledge on inclusion by challenging the national doxa. These international ideologies, in a broad sense, can, unsurprisingly, conflict with deeply embedded national ideologies, beliefs and doxic knowledge about how children with disabilities should be educated. Thus, State party reports and Concluding Observations can become manifest as a site of resistance and/or power struggles between national governments and the UN over accepted ‘rights’ behaviour. This is reflective of the way in which international law and policy can be understood as ‘the struggle between contenders of competing objectives, where language – or more specifically,

discourse – is used tactically’ (Fulcher 1989, 7), and attempts made by State parties to ‘reassert solidarity’ (Bourdieu 1977, 181) with national doxic knowledge.

As Taylor (1997) argues, texts must be analysed within their contexts and in light of their consequences on the policy arena. It is not simply a matter of a State party submitting a factual report and this being examined neutrally by the Committee. State party reports are essentially social products and inherently political. They are designed for a particular purpose and for a particular audience and cannot be regarded as an impartial or a factual account of what is happening on the ground. Similarly, the Committee itself is only able to examine what is actually presented to them in a very short space of time. It is impossible for the Committee to highlight everything of concern so inevitably they have to prioritise. Different committee members may pick up on different issues and/or have different priorities depending on their background or expertise. We must also be mindful that the CRPD was itself developed directly with people with disabilities and that the Committee is made up of a majority of people with disabilities (Kayess and French 2008). This is in stark contrast to the monitoring bodies of other human rights treaties. Thus there could be said to be added legitimacy in the Committee’s produced observations and commentary given its composition as a body both *of and for* people with disabilities. It would be naïve however to state that this body is therefore automatically representative of all people with disabilities. Each member will have their own disability experience and will come with a particular perspective that will shape subsequent discussions. Indeed, the CRPD treaty text itself, including on Article 24, is the outcome of compromise and long-standing negotiations between country representatives, UN officials, international NGOs and people with disabilities (Kayess and French 2008). Committee membership has, for example, included persons who are blind, who have a psychosocial disability, physical impairment, and intellectual disability. They will also have their own experience of education. Thus, in understanding the nature of Concluding

Observations, it is important that we unpack and understand the inherent dynamics, politics and compromises that contributes to its creation and the development of its preferred meanings, the ways in which produced Concluding Observations are given authority through the reporting process, and finally, how their conclusions are subsequently received, reinterpreted or even resisted by State parties (Johnson 1986/87; Bernstein 1990; Apple 2018). While this raises questions on the extent to which Concluding Observations can be fully comprehensive and meaningful, they do provide valuable, and the best insight we have, into: ‘what is’, ‘what should be’ as well as persistency of common issues across the world. As Hardy and Woodcock (2015,144) observe: ‘systematic attention and more detailed critique of how specific policy texts in international, national and sub-national settings discursively construct notions of inclusion are critical for making sense of whether and how values of inclusion are indeed evident at the discursive level, under current conditions’.

Method

A content analysis was undertaken of all Concluding Observations produced by the Committee to date, from its first examination in 2011, to the end of 2018. In total, 72 sets of Concluding Observations were produced during this time period. Countries that have ratified the CRPD are expected to submit their initial report within 2 years of the date of ratification, and then every 4 years thereafter (Article 35 CRPD). All State party reports and Concluding Observations sent to and produced by the Committee are archived on the Committee’s webpages on the Office of the High Commissioner for Human Rights (OHCHR) website. This can be searched by country or Committee session, making for a straightforward search. No search terms were required since all Concluding Observations to date were utilised. Once all documents were downloaded, the Committee’s commentary on Article 24 was copied

from each and pasted into a new word document, identifiable by country and year. As all documents are publicly accessible, there were no ethical issues to be considered. Once the data gathering was completed, data was analysed using a thematic inductive analytical strategy (Mayring 2004). Following familiarisation with the data, the data was coded in accordance with the key themes that emerged. The table below shows the countries for whom Concluding Observations are available and included in the study.

Table 1

Moldova	Jordan	Armenia	Montenegro
Canada	Republic of Korea	Bosnia and Herzegovina	Morocco
Bolivia	Ethiopia	Italy	Panama
UAE	Colombia	Guatemala	United Kingdom
Serbia	Portugal	Slovakia	Luxembourg
Uganda	Thailand	Chile	Latvia
Lithuania	Ukraine	Qatar	Russia
Gabon	Kenya	Mauritius	Sudan
Brazil	Czech Republic	New Zealand	Nepal
Denmark	Cyprus	Belgium	Haiti
Ecuador	Mexico	El Salvador	Seychelles
Azerbaijan	Costa Rica	Sweden	Slovenia
Australia	Austria	Paraguay	Oman
Hungary	Argentina	China	Iran
Peru	Spain	Tunisia	European Union
Cook Islands	Croatia	Dominican Republic	Philippines

Germany	Mongolia	Turkmenistan	Malta
Bulgaria	South Africa	Macedonia	Poland

Table 1: Countries with issued Concluding Observations 2011-2018

Responses to a State party's progress against each article in a set of Concluding Observations is essentially divided into two parts. The first part highlights issues of concern in relation to the relevant article while the second focuses on recommendations for improving a State party's progress in that area. While we might expect the content of the latter to mirror the former, analysis of Concluding Observations suggests that this is not necessarily the case. Issues of concern that were highlighted did not always appear to warrant an accompanying recommendation. As such the resultant analysis was separated into two parts – the first part identifying the themes in the issues deemed to be of most concern, and the second uncovering the most common recommendations made. This allows for a more nuanced approach to be taken.

Findings and Discussion

Issues of concern

Wide-ranging concerns have been identified by the Committee between 2011 and 2018. A summary of these can be seen in the table below. Here, *n* refers to the number of times an issue was highlighted as a concern across the 72 countries examined.

Issue	N	%
Educational placement	50	69
Lack of training/personnel	27	38
Lack of reasonable adjustment	17	24
Enrolment/admissions issues	17	24
Lack of data	15	21
Limited or lack of strategy/law/policy	15	21
Barriers or inaccessibility in school system	15	21
Limited access to tertiary education	12	17
Issues with budgetary allocation	10	14
Quality of inclusive education	9	13
Limited implementation	7	10
Negative attitudes	6	8
Limited redress	5	7
Limited school transport	3	4
Monitoring issues	3	4
Absence of indicators	3	4
Illiteracy	3	4
Limited access to preschool	2	3
Attainment gap	2	3
Lack of research	2	3
Limited access to afterschool	1	1
Total	228	

Table 2: Issues of concern raised across Concluding Observations

In total 21 thematic issues of concern were highlighted. Reference to educational placement was made in 69% of Concluding Observations ($n=50$)² followed by lack of training among teachers (38%, $n=27$), lack of reasonable adjustment provision (24%, $n=15$) and issues relating low enrolment and/or admissions (24%, $n=15$). Lack of disaggregated data on the education of children with disabilities (21%, $n=15$), the absence or limited availability of legislation or policy (21%, $n=15$) and the extent of physical or environmental barriers in the education system (21%, $n=15$) were also significant. It is interesting to note the more common reference to the exclusion of young people with disabilities from third-level education (17%, $n=12$) than from pre-school settings (3%, $n=2$).

Through these Concluding Observations, we can see examples of a more nuanced approach being adopted to educational issues. For example, in relation to teacher training, the Committee has drawn attention to the poor quality of teachers' education, in both pre-service and in-service training (Italy 2016), while in respect of Jordan (2017), the Committee highlighted that teachers were lacking in training on delivering mathematics and computers curricula in a manner that is accessible to all students, with the result that these curricula were being denied to deaf and blind students. Attention has also been drawn to the negative attitudes among both teaching and administrative staff in mainstream schools, with the result that some children were being denied admission (see for example, Moldova 2017), while schools in Uganda (2016) have been criticised for the non-admission of children with 'severe' disabilities. In the case of Brazil (2015), the Committee expressed concern that children with disabilities were either not admitted to mainstream schools or were required to pay extra fees.

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² This will be discussed in the next section.

The lack of available reasonable accommodation has been noted as a key barrier to the creation of a more inclusive education system (for example, New Zealand 2014, Croatia, 2015), and, in some instances as leading to children being subsequently referred to special schools (for example, Belgium 2014). This criticism has extended to tertiary education (for example, Slovenia 2018). More generally, the absence of country specific legislation, strategies, policy frameworks or action plans aimed at establishing and developing an inclusive education system in a coherent way, have been critiqued (Spain 2011, Luxembourg 2017, Macedonia, 2018, South Africa 2018). Countries that have developed legislation or strategies are not exempt from scrutiny, with concerns raised about their implementation (Tunisia, 2011, Argentina 2012, Peru 2012, Seychelles 2018).

Types of recommendations made in Concluding Observations

The issues raised did not necessarily mirror the types of recommendations that were made to a State party. This can be seen in the table below:

Recommendation area	N	%
Provision of staff training	48	67
Provision or development of reasonable adjustments	44	61
Increased budgetary allocation	41	57
Need to increase inclusive and quality education	29	40
Compliance with Sustainable Development Goal 4	28	39
Develop strategy or action plan for an inclusive education system	21	29

Improve accessibility of school e.g. curriculum, physical	20	28
Improve access to tertiary education	18	25
Revise or develop new legislation or policy on specific area	16	22
Better data collection	12	17
Provision of assistive technology	11	15
Transition plan for an inclusive system	8	11
Awareness raising	7	19
Develop indicators	6	8
Promote enrolment/admissions	5	7
More research	5	7
Monitoring	4	6
Individualised plans	4	6
Improve access to preschool	4	6
Redress opportunities	3	4
Address illiteracy concerns	2	3
Involve children and young people and parents	2	3
Transport provision	2	3
Employ teachers with disabilities	1	1

Table 3: Types of recommendations made in Concluding Observations

In total 24 different types of recommendations were made across the 72 sets of Concluding Observations. In contrast to issues of concern, particular types of recommendations were more likely to be commonly highlighted. The most common recommendation made related to

the need for staff training (67% of Concluding Observations, $n=48$) followed by the provision of reasonable adjustments (61%, $n=44$). The need for increased budgetary allocation (57%, $n=41$), a more inclusive and quality education (40%, $n=29$) and compliance with Sustainable Development Goal 4 (39%, $n=28$) were also key areas of focus.

The Committee has recommended that training for teachers be ‘effective and permanent’ (South Africa 2018), ‘adequate and continuous’ (Seychelles 2018), and mandatory (Haiti 2018). Training should be focused on inclusive education, methods and best practices, as well as including learning sign language, Braille and Easy Read skills (for example, South Africa 2018, Morocco 2017). It is particularly interesting to note that parents are also identified as a group in need of training with the Committee recommending that parents of children with disabilities receive training on the advantages of quality inclusive education in respect of Bulgaria (2018), and be provided with awareness-raising and support initiatives on inclusive education (United Kingdom 2017). Moreover, that parents of non-disabled children be provided with awareness raising on the advantages of inclusive education for all (Macedonia 2018).

As noted in the previous section, consistent reference is made throughout the Concluding Observations on the need for the development of reasonable accommodation strategies including through technology and classroom support, accessibility and learning materials (Morocco 2017, Bolivia 2016). Interestingly, in the case of Italy (2016), the Committee acknowledged that general communication assistants are not a reasonable alternative, and recommended that the State party ‘monitor and provide highly qualified sign language interpreters for any deaf child who requests such assistance’. Finally, the Committee has emphasised that the achievement of an inclusive system is heavily contingent upon sufficient budgetary allocation (for example, Argentina 2012, Iran 2017, Russian Federation 2012).

Many of the issues highlighted across both parts may seem logical in the achievement of quality inclusive education for children and young people with disabilities. Given the controversy surrounding the meaning of inclusion generally, and of educational placement in particular, the next part of this article will draw out the Committee's observations on this area and its implications for policy and practice.

The Politics of Educational Placement

As noted in the CRPD General Comment on inclusive education, there has been a strong focus on a definitive shift away from segregation and integration towards meaningful, quality inclusion. Progress (or lack thereof) against this standard has emerged as a distinctive area of concern for the Committee. The frequency of references to educational placement is indicative of the sheer scale of the task at hand globally and the ongoing challenges in achieving a meaningfully inclusive education system. None of the 72 countries has been highlighted as an exemplar of best practice. Even where the existence of legislation promoting access to education for children with disabilities generally has been welcomed, (for example, Sudan 2018, Chile 2017, Spain 2011), significant shortcomings remain. Of the 72 countries analysed in this study, New Zealand appears to attract the most positive comment, albeit with a nod to ongoing challenges. Here, in 2014, the Committee noted 'the ongoing steps being taken to increase inclusive primary and secondary education, and the ongoing challenges to making the education system fully inclusive.' Nonetheless, concerns were still expressed at the lack of an enforceable right to inclusive education and at the bullying experienced by children with disabilities in schools. Elsewhere, the Committee has, expressed concern that:

Students with disabilities continue to be placed in special schools and many of those who are in regular schools are largely confined to special classes or units. (Australia 2013)

Children with disabilities continue to be placed in special boarding and other specialized schools. (Azerbaijan 2014)

Children with disabilities... remain in segregated educational settings, including ‘special schools’, ‘special classes’, and ‘home education’ and do not receive the support they need to access inclusive education. (Moldova 2017)

[P]ersistence of segregated special education environments for students with disabilities who require a high-level of support or when it is considered that a student with disabilities may interfere in the educational process of his or her peers. (Canada 2017)

Interestingly, one of the most detailed criticisms has been in respect of the United Kingdom, where the Committee critiqued three areas:

- a) The persistence of a dual education system that segregates children with disabilities in special schools, including based on parental choice;

- b) The increasing number of children with disabilities in segregated education environments;
- c) The fact that the education system is not equipped to respond to the requirements for high-quality inclusive education, particularly reports of school authorities refusing to enrol a student with disabilities who is deemed to be “disruptive to other classmates” (United Kingdom 2017)

One of the most striking observations from the Committee was in response to Portugal in 2016 where, in noting that Portugal had established ‘model schools’ for deaf, blind, deaf-blind and visually impaired students, as well as for autistic students, stated that this was ‘a form of discrimination’ (Portugal 2016). A similar comment was made in respect of Croatia in 2015 when the Committee recommended that Government establish ‘the principle that exclusionary and segregated education is discriminatory’. These are incredibly powerful statements and in doing so the Committee is laying down clear norms around what is not considered acceptable. To read this another way, the Committee is suggesting that the establishment of special schools, in being a form of segregation and discrimination, is a breach of international human rights standards on the right to inclusive education. The implied consequence is very clear – any country that has segregated special schools, and which has ratified the CRPD, is immediately violating the rights of children and young people with disabilities. This is a significant move forward from its response to Spain in 2011 where the Committee recommended that Government should ensure that decisions to place children with disabilities in a special school or in special classes should be taken in consultation with parents. More recently, however, in examining Cyprus in 2017, the Committee recommended that Government ‘decide upon a clear legislative scope of inclusive

education and monitor its implementation with a view to fully replacing segregated education by inclusive education'. This would appear to be somewhat contradictory since use of the phrase 'with a view to' would suggest it is not compulsory or absolutely necessary despite the clear statements elsewhere that segregation is discriminatory. The Committee's emergent consensus that inclusive education is at odds with any form of segregation may appear revolutionary on the face of it, and a powerful lobbying tool for organisations worldwide. However, it has attracted criticism from deaf communities and organisations that doing so, in fact neglects the linguistic and cultural identities and rights of deaf children, and is contradictory to the provisions set out in Article 24(3)³ (Murray, Snoddon, De Meulder, and Underwood 2018). Rather, it would appear from the Concluding Observations to date, that the Committee has implicitly interpreted Article 24(3)'s reference to 'environments which maximise academic and social development' to mean mainstream educational environments as a matter of course rather than acknowledging the need for a nuanced approach to be taken to inclusive education for different impairment groups. Doing so glosses over the rationale for Article 24(3)'s inclusion in the first place and the need for 'sensory exception' to be made to the principle of inclusive education, for deaf, blind, and deafblind children and young people (Murray, De Meulder, and le Maire 2018).

Some attention has been paid to the importance of language in educational contexts. For example, in 2018, the Committee criticised Poland for its interchangeable use of 'integration' and 'inclusion' (see also Austria 2013), while in respect of Paraguay in 2013, it expressed concern at the persistent use of terminology drawn from the medical model of disability when assessing educational standards. While this is evidence of a more nuanced approach and recognition of the complexities of language, this has been the exception rather

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³ Article 24(3) CRPD requires States parties to ensure that the 'education of persons, and in particular children, 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.'

than the rule. Nor is the pursuit of inclusive education without cost. In calling for more inclusive education systems, the Committee has explicitly called on State parties to ‘reorient’ or ‘reallocate’ resources from the special education system to promote inclusion in the mainstream education system (for example, China 2012, Qatar 2015, United Arab Emirates 2016). This would appear to be a strategic move towards facilitating the development of more inclusive mainstream settings. However, the task of ‘reallocating’ resources raises unanswered questions around the continuing experiences of those children and young people with disabilities currently in special schools and the reality that reallocating resources will invariably mean a reduction in provision or quality of supports and services to those in segregated settings. This raises a key issue associated with critical policy analysis; namely, who benefits and who loses out from particular policy directions. While the move to an inclusive education system should ultimately benefit all, the immediate consequences for those currently in segregated settings need to be ascertained and closely monitored. Such a transition will not occur overnight. How do we know when the mainstream system is inclusive ‘enough’ to allow the transition to take place in a way that does not adversely impact on those making the transition? What if the mainstream system simply is not able to (or will not...) offer the same level of support or even quality inclusion in the same classrooms as all other children? The latter is not simply a linear process but is also determined to a large extent by the willingness from national Government to facilitate such a move. This transitional window appears to be emerging as a site of profound power struggle and resistance from State parties against international law and policy. More interestingly, it appears to be emerging as a site of conflict between a majority of non-disabled policymakers at national level, and a majority of Committee members with disabilities at international level. In assessing the beneficiaries and losers of the shift in educational placement, it is imperative that children with disabilities already in segregated settings – and those with the

most complex and profound needs in particular – do not become pawns in the midst of policy chess. Similarly, where children with disabilities themselves express a preference for segregated settings (Goodall 2018), in light of their rights under Article 7(3) CRPD, to express a view on matters affecting them and for these views to be given due weight, do we as adults have the right to overturn that always, in what might be perceived as their ‘best interests’? In the same way that the rights of the majority (children without disabilities) in the mainstream classroom should not be used as a justification for rescinding the rights of the minority (children with disabilities), so too should the rights of the majority of children with disabilities not be used as a justification for rescinding the rights of the minority of children with the most profound disabilities. The move from segregated to inclusive settings is not unproblematic –but needs to be directly confronted if the CRPD is to be true to its mantra ‘nothing about us, without us’.

It is noteworthy that the Committee has recognised this transitional challenge, albeit only in 9 out of the 72 sets of Concluding Observations examined. For example, it has called on States parties to:

Immediately enact a plan of transition to ensure inclusive education for persons with disabilities at all levels, including in higher education institutions. (Macedonia 2018)

Ensure the implementation of a plan to transition definitively to inclusive education at all levels, including in higher education; the plan should provide for the training of teachers and the necessary support and resources, such as Braille and sign language, to foster inclusion, in particular of students with intellectual or psychosocial disabilities and girls with disabilities. It also recommends that the State party ensure the universal accessibility of educational premises, including universities. (Panama 2017)

Establish a time frame for the transition process from segregated to inclusive and quality education and ensure availability of budgetary, technical and personal resources are available to complete the process. (Iran 2017)

Expedite taking action, establish a time frame for the transition process from segregated to inclusive education and ensure that budgetary, technical and professional resources are available to complete the process and collect disaggregated data on the advancement of the inclusive education system. (Uganda 2016).

Similar statements have been made in respect of Slovakia (2016), Chile (2016), Kenya (2015), Dominican Republic (2015), and Turkmenistan (2016). While undoubtedly welcome, given that educational placement has been noted as a persistent issue in almost three quarters of Concluding Observations, it would appear pertinent that recommendations surrounding the need for a transition plan from segregated to inclusive education be made in all of those rather than a select few. Focus on a transition plan would also allow the spotlight to be shone more definitively on those for whom segregated education may be perceived by national policymakers as inevitable and insurmountable.

The Particularities of Impairment

Finally, in assessing whose knowledge is perceived as having authority or legitimacy in the production and dissemination of a policy text, it is important to examine the extent to which the diversity of impairment is acknowledged in the Concluding Observations. The experience of and requirements for inclusive education may vary from impairment group to impairment

group. For example, children and young people who are deaf may experience communication barriers in their quest for inclusive education in contrast to the physical barriers experienced by someone with a mobility impairment. While the Committee takes a holistic view of disability as per Article 1 of the CRPD, it is interesting to note that reference has been made to specific impairments in a number of cases. An overview of this can be seen below. Table 4 shows references made to specific impairments in the first part of Concluding Observations on Article 24.

Impairment	N
Deaf/hearing impairment	10
Intellectual	8
Psychosocial	3
Blind/visual impairment	3
Autism	2
Deaf blind	2
Physical	1
Moderate/severe	1

Table 4: References to specific impairment in first part of Concluding Observations

It is interesting to note that the most common impairment referenced has been deafness or hearing impairment (n= 10, 14%) followed by intellectual disability (n=8, 11%). Only one reference has been made to children with physical disability and in one case reference was made to children with ‘moderate and severe disabilities’ being educated in segregated settings (Poland 2018). Impairment specific comments have been borne out of concern at the

particular exclusion of some groups of children and young people. For example, at ‘the high number of students with disabilities, including girls with disabilities, those with intellectual disabilities or autism and those who are deaf or hard of hearing’ who are outside of the school system in South Africa (2018) and that ‘teachers lack training on delivering the mathematics and computers curricula in a manner that is accessible to all, with the result that these curricula are being denied to deaf and blind students’ in Jordan (2017). The discrimination against children with psychosocial and/or intellectual disabilities in accessing education has been highlighted (see for example, Sudan 2018, Luxembourg 2017, Mexico 2014, El Salvador 2013). Table 5 shows the number of impairment specific references made in the recommendations section of the Concluding Observations on Article 24. As we can see, this does not necessarily correlate with Table 4 above.

Impairment	N
Intellectual	10
Psychosocial	6
Deaf-blind	6
Deaf/hearing impairment	5
Autism	2

Table 5: References to specific impairment in second part of Concluding Observations

In contrast, there is no reference to physical disability and the most common impairment specific reference relates to intellectual disability. It is of note that there is one reference to children who are ‘deaf-mute’ (Kenya 2015), a term which could be considered as derogatory. Here, the Committee called on Kenya to ensure that school facilities are accessible for ‘deaf-

mute children', and provide materials and curricula adequate to their needs. Interestingly, this term was not used in the Kenyan State party report itself.

In assessing the extent to which we can ascertain any meaning from these references, it is important to note that the Committee's responses are generally shaped by the information that is presented to them. Thus if no information is presented on, physical or multiple disabilities, for example, then it will not be in a position to comment or make a recommendation on this. However, making specific reference to impairment is arguably important in acknowledging the diversity of experience and emphasising to national governments that there is no 'one size fits all' approach. Of particular note is the absence of reference to children with the most complex and profound needs and for whom the transition to inclusive education will be the most challenging. This absence is deeply concerning. While some guidance is provided in terms of the need to ensure physical or communication access, there is a clear lack of conversation around what inclusion looks like for those who are most likely to be excluded from the education system and who are least likely to have a voice at either international or national levels. This risks protecting and promoting rights primarily for those with the 'right' kinds of disabilities, reinforcing the marginalisation of the most vulnerable in our society. This potential skewness, whether or not intended, must be acknowledged and the Committee must be cognisant of the realities of inclusive education for the full range of impairment groups.

Conclusion

Discourses of inclusion as articulated through legislation and policy can be understood as objectifications of dominant world visions at a particular point in time. Viewed through early international human rights law, such discourses are characterised by their inherent

reproduction of disability as individual deficit or reduced capacity. Article 24 of the CRPD represents a challenge to that long-held cultural arbitrary and an opportunity to challenge the rules on which the immanent structures and practices of education for children with disabilities are based. The right to inclusive education has become more focused and explicit in legislative terms over time, translating into a clearer normative framework and constitutive of higher standards than has previously been the case. This is a clear ‘win’ for children and young people with disabilities generally. Yet, the higher standard that is now expected, as indicated by the Committee’s statement that segregation is a form of discrimination may, on the one hand, become a double-edged sword, producing, in normative and practical terms, significant gaps in implementation at state level than has previously been the case. Specifically, while some form of segregation and special education was accepted under previous human rights treaties such as the UN Convention on the Rights of the Child, the normative shift under the CRPD points to many more, if not all, countries now falling short of the minimum standards expected. This is evidenced by the Committee’s Concluding Observations to date.

On the other hand, this apparent widening gap, could be more appropriately understood as reflective of the long-standing resistance from States parties to do more than the legislated for minimum and the perceived need for a definitive challenge to existing doxic knowledge on inclusion (Bourdieu 1990). Challenging the doxa requires more than mere conscious-raising. Bourdieu suggests that change emerges through collective action, and even then, substantive change to dominant world views will only occur when there is an ‘objective crisis’ (Bourdieu 1977). It is only “when the social world loses its character as a natural phenomenon that the question of the natural or conventional character...of social facts can be raised” (Bourdieu 1977: 169). The Concluding Observations produced by the Committee, not least one made of a majority of people with disabilities, is one way in which dominant world

views can be collectively challenged. However, moving to and beyond the Article 24 minimum requires acceptance from duty-bearers that the exclusion and marginalisation of children with disabilities from the education system has been grounded in misrecognition and symbolic violence. It requires assumption of State party responsibility and the reversal of blame transfer from the individual to the state. Opportunities for States parties to interpret Article 24 CRPD solely as a conservation strategy for the continued legitimisation of existing practice are shrinking in light of heightening benchmarks. Nonetheless, it is evident from the Concluding Observations to date that there are continued attempts to do so.

We must also consider the extent to which the right to inclusive education is fully inclusive. While this appears to be the case in presenting children and young people with disabilities universally, the heterogeneity of this group must also be acknowledged. In particular, the voices and experiences of those most likely to be in special schools or other segregated settings at present are conspicuously absent. It is children and young people with the most complex and profound disabilities and for whom the practicalities of inclusive education are more difficult to achieve who are actually the most excluded and silenced in debates on the issue. The subtle silencing of those with the most profound disabilities can become manifest as a form of symbolic violence (Bourdieu 2000), implicitly reproducing a hierarchy of disability, and prioritising those who can – in relative terms and in the eyes of duty-bearers - be more easily supported to become part of an ableist world. We must also consider what happens if a child or young person with a disability expresses a clear preference for special education or segregation in light of their Article 7(3) CRPD rights. This does not necessarily mean that segregation is ‘better’, but is arguably bound up with and maintained by processes of misrecognition occurring below the level of individual consciousness; a ‘learned knowledge that does not know itself...consisting in mistakenly recognising oneself in a particular form of representation’ (Bourdieu 2000: 185) and of

learned understandings of what is and what is not ‘for the likes of us’. In other words, of what is deemed possible or impossible, or indeed acceptable, for individuals occupying a particular position in the social order. Finally, we must be mindful that what may be perceived or defined as ‘segregation’ by one (for example, the Committee), may actually be experienced and understood as inclusive by another (for example, by some children who are autistic, blind, deaf, or deafblind). No rights provision should be given greater weight over another. Yet, it is evident that the provisions of Article 24(1) have been prioritised over Article 24(3), or indeed that the latter has been assimilated into the former, such has been the lack of association made between the linguistic identity of the deaf community, environments that maximize academic and social development for deaf, blind and deafblind children, and the existence of specific schools for these groupings, in the Concluding Observations to date.

Practically, a transition plan to inclusion goes some way to identifying and deconstructing the barriers presented by mainstream education settings. For States parties, more substantive guidance on how this could work for children and young people with the most profound needs and highlighting of best practice would go some way to demonstrating what can be achieved. Much depends on States parties’ willingness to implement the right to inclusive education for all, however, they cannot operate in a vacuum. The Committee is perfectly positioned to offer guidance on the sticking points of inclusive education. These issues need to be explicitly confronted so that the international disability rights framework promotes inclusive education for all children with disabilities and not only for those with the ‘right’ kinds of disabilities.

Declaration of Interest

No interests to declare

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