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Article 17 and inclusive education in the new UN Disability Convention

Briefing from the Centre for Studies on Inclusive Education, August 2004

Summary

In this briefing, CSIE argues that the current draft of Article 17 (Education) of the new UN Disability Convention fails to ensure that all disabled learners have a right to inclusive learning in mainstream education. It actually works against this by providing for a right to choose segregated 'special' education and by singling out certain categories of disability.

If the new Convention is to fully enshrine the right to education in a single, inclusive system of education which is adaptable to the best interests of each and every child, the possibility of choosing segregation should be entirely removed and the obligation to ensure inclusive provision should be strengthened, including through proper targeting of resources and the reduction of all forms of segregation.

The Centre's proposal for an amended Article 17 to take account of these points is on pages 8 and 9 of this Briefing Paper.

Background

In January 2004, a draft version of the new Convention was produced by the Ad Hoc Working Group which formed the basis for discussions at a meeting in New York in May/June (the third session) of the Ad Hoc Committee, made up of representatives from governments and non-government organisations (NGOs).¹ The working text which resulted from these latest discussions, including article 17 on Education, takes the form of the original Working Group version with inserted amendments from participants. It represents a record of contributions at the meeting rather than an officially

¹ A list of the participants in the discussion (document ref A/AC.265/2004/INF/1) is available at

www.un.org/esa/socdev/enable/documents/a_ac265_2004_inf_1.pdf. The report of the third session of the Ad Hoc Committee on the Protection and Promotion of the Rights and Dignity of Persons With Disabilities (document ref A/AC.265/2004/5) is available at www.un.org/esa/socdev/enable/rights/ahc3reportadv.htm.

proposed final text or a resolution of key issues.² These issues must therefore be addressed in the next (fourth) session of the Ad Hoc Committee in August/September 2004.³

In response to the May/Jun negotiations, the International Disability Alliance, representing seven major international NGOs,⁴ has proposed a version of article 17 which addresses some of the problems identified so far, notably from CSIE's point of view, the removal of choice of segregated, 'special' schooling for some children. CSIE welcomes this NGO version but believes it needs strengthening further to secure full rights to inclusive education for all.

The coming negotiations between governments and NGOs present an unprecedented opportunity to ensure that children's right to inclusive education is enshrined in international standards for disabled people and that segregated schooling is not an option for any child. Failure to reach agreement on these lines would be a serious setback to realising disabled and non-disabled children's equal rights to high quality mainstream education.

Choosing between segregation and inclusion

As CSIE has argued from the outset, one of the major problems with the draft of article 17 in the official working text is that it allows for the segregation of disabled learners and learners with special educational needs into 'special' schools as a legitimate human right. Paragraph 3 says that:

'where the general education system does not adequately meet the needs of persons with disabilities special and alternative forms of learning should be made available. Any such special and alternative forms of learning should ... (c) allow a free and informed choice between general and special systems.'

² Extracts from what is referred to as the 'official working text' in this paper are taken from the original Working Group text. The fully annotated version is available at www.un.org/esa/socdev/enable/rights/ahc3modfinal.htm.

³ Information on the fourth session is available at www.un.org/esa/socdev/enable/rights/ahc4.htm.

⁴ Disabled Peoples International, Inclusion International, Rehabilitation International, World Blind Union, World Federation of the Deaf, World Federation of the Deafblind, World Network of Users and Survivors of Psychiatry. Further information at www.internationaldisabilityalliance.org/.

This elevation of a right to choose above the right to inclusive education is also reflected in paragraph 2:

‘... States parties shall ensure (a) that all persons with disabilities can choose inclusive and accessible education in their own community (including access to early childhood and pre-school education).’

Seeing segregation into separate ‘special’ schools as a legitimate human right fails to take account of the mounting empirical evidence of the detrimental effects on individuals and society of segregating disabled learners into these so-called ‘special’ educational facilities.⁵

It also fails to take into account the developing interpretation of the UN Convention on the Rights of the Child (1989), which has increasingly been concerned with including children in mainstream education rather than in segregated ‘special’ provision. One significant outcome of the day of General Discussion in 1997 by the Committee on the Rights of the Child on the rights of children with disabilities was that the segregation of children with disabilities ‘for care, treatment or education’ represented a breach of the Convention.⁶ Both the UN Standard Rules on the Equalisation of Opportunities for Persons with Disabilities (1993) and the UNESCO Salamanca Statement and Framework for Action (1994) clearly indicate that the existence of separate ‘special’ educational provision is only acceptable insofar as mainstream education has not yet developed sufficiently to accommodate all children.

The drafting of the new Convention provides an opportunity to build in to international human rights law the imperative for governments to develop a single, inclusive system of education which includes disabled people from the outset. It is a fallacy that separate systems are needed to pave the way before inclusive systems can be put in place. Even in situations where children are denied education altogether, their rights will not be fully realised through segregated schooling.

Adapting education to each child

The UN Special Rapporteur on the Right to Education, Katarina Tomasevski, has conceptualised governments’

⁵ See CSIE’s (2003) paper ‘The case against segregation into special schools: A look at the evidence’.

⁶ Document ref CRC/C/66, Annex V, para.338(d), available at www.unhchr.ch/html/menu2/6/crc/doc/days/disabled.pdf.

responsibilities in meeting children's right to education in terms of 'the 4-As'. For the right to education to be fully realised, governments must make education available, accessible, acceptable and adaptable.⁷ CSIE argues that to realise the right to education in this way is in fact to make it inclusive, particularly through adopting the fourth 'A' of adaptability.

For children and young people, what is considered acceptable is clearly stated in articles 28 and 29 of the UN Convention on the Rights of the Child, ratified (though by no means fully implemented) by all but 2 countries and reflected in the drafts of article 17 under consideration. According to the Special Rapporteur, that education must be adaptable has also been widely recognised:⁸

'What we have accomplished in human rights – and it is a huge accomplishment – is the complete conceptual switch stating that no child should be forced to adapt to education. The principle requires complete reversal. Education should adapt to the best interests of each child.'

If the 'conceptual switch' to the principle of adaptability is adopted there should be no legitimate reason for the current controversy about whether or not a choice of separate 'special' education should be maintained for some disabled children. Mainstream education must change and really does have to adapt to the best interests of all.

As Katarina Tomasevski points out, the implications of governments applying the '4-A scheme' are huge:⁹

'The challenge is immense – the system of education is required to adapt to each individual

⁷ These are explained in four 'Rights to Education Primers', written by Tomasevski in 2001 and available at www.right-to-education.org – No.1 *Removing obstacles in the way of the right to education*; No.2 *Free and compulsory education for all children: The gap between promise and performance*; No.3 *Human rights obligations: making education available, accessible, acceptable and adaptable*; No.4 *Human rights in education as a prerequisite for human rights education*. See also Tomasevski's keynote address to the CSIE Conference 'Developing inclusive education: Supporting human rights in local mainstream schools', 19 May 2004, available at <http://inclusion.org.uk>, and CSIE's (2002) report *Social and educational justice: the human rights framework for inclusion*.

⁸ Keynote address to the CSIE Conference 'Developing inclusive education: Supporting human rights in local mainstream schools', 19 May 2004, available at <http://inclusion.org.uk>.

⁹ Quoted in CSIE's (2002) report, *Social and educational justice: the human rights framework for inclusion*, p.11.

child, against the historical heritage of excluding all the children who were deemed not to be able to adapt to the education system as it was.'

The problem with making sensory disabilities a 'special' case

CSIE recognises the importance of education in and about appropriate systems of communication and of ensuring learners are enabled to become fluent in that communication, but has misgivings about identifying particular disabilities, as currently set out at paragraph 4 of the official working text.

In a Convention in which rights should be realised without discrimination (articles 2 and 3 of the official working text), the communication requirements of *all* learners should without question be covered by paragraph 2 (b) of the official working text, which states that in realising the right to education for persons with disabilities, States Parties shall ensure:

'the provision of required support, including the specialised training of teachers, school counsellors and psychologists, an accessible curriculum, accessible teaching medium and technologies, alternative and augmentative communication modes, alternative learning strategies, accessible physical environment, or other reasonable accommodations to ensure the full participation of students with disabilities.'

CSIE is also concerned at the elaboration of distinct paragraphs relating to learners with sensory impairments in the NGO draft from the International Disability Alliance.

The learning requirements of children and young people with sensory disabilities should be considered as a matter of course to be covered by the obligation on governments to make reasonable accommodations and to ensure the accessibility of the curriculum and other areas of educational provision stated in paragraph 2. In the UK, there are growing numbers of learners with sensory disabilities being successfully included in mainstream settings. The inclusion in mainstream of other disabled persons whose representatives frequently advocate separate, segregated education¹⁰ is increasingly regarded as successful and beneficial for all concerned.

The need for recognition, support and fostering of particular cultures, communities and identities associated with persons

¹⁰ For example, those with autism, 'high level support needs' or 'severe communication difficulties'.

with sensory disabilities does not require separate educational provision but can be met in fully inclusive and properly resourced mainstream settings in which education is highly flexible and provides opportunities for a variety of grouping arrangements based on the best interests of individual learners. It should also be recognised that educating children with particular disabilities 'in their own groups', because of low prevalence rates, could result in them having to attend schools outside their locality, thus violating other significant rights under the Convention on the Rights of the Child (e.g. rights to family life and recreational activities).¹¹

Giving persons with certain disabilities a 'right to receive education in their own groups', as proposed by the NGO draft, would undermine the right to inclusive education enshrined in the remainder of article 17. Having rightly proposed removing the choice of segregated 'special' schooling as an option, the International Disability Alliance raises the possibility of segregation in a new guise, as education for pupils 'in their own groups'. As in the official working text, although perhaps not in such an obvious way, the NGO draft effectively weakens the right to inclusion by pulling in two directions.

A right to separation was accommodated in the Salamanca Statement and Framework for Action, undoubtedly weakening it as a result by leaving it open to claims that the agreement supports both segregated 'special' schooling and an inclusive mainstream. More than ten years after it was formulated, governments continue to officially espouse a commitment to inclusive education at the same time as supporting policies and practices which exclude and segregate disabled learners. CSIE hopes that such mutually contradictory proposals will not be written into the new Convention in any form and that an unequivocal focus can be maintained on the right to inclusive education which is available, accessible, acceptable and adaptable to all.

Resourcing inclusion and reducing exclusion

Because inclusion and exclusion are mutually incompatible concepts it has to be recognised that wherever exclusion and segregation occur, and in whatever form, education is not inclusive.

Paragraph 1(a) of article 4 of the official working text says that States Parties undertake:

¹¹ This is discussed more fully in CSIE's (2002) report *Social and educational justice: the human rights framework for inclusion*.

'to adopt legislative, administrative and other measures to give effect to this Convention, and to amend, repeal or nullify any laws and regulations and to discourage customs or practices that are inconsistent with this convention.'

CSIE believes that the common lack of understanding that *all* forms of exclusion and segregation are 'inconsistent' with the development of inclusive education necessitates an explicit reference to reducing exclusion in article 17.

The conflict between advocating inclusion on the one hand while supporting both inclusion and exclusion on the other is economic as well as conceptual. Often a sticking point to the full implementation of the 'conceptual switch' from adapting the child to education to adapting education to the child is financial, as governments and judiciaries cite resources as the reason for mainstream education failing to adapt to the needs of learners with particular disabilities.¹² While resources (human and financial) are used to develop inclusive education *and* to support exclusion and segregation, most obviously by maintaining a dual system of 'ordinary' and 'special' education, inclusive education will not be developed to maximum effect.

Economically, it is far more efficient to target resources towards a single inclusive education system from the outset than to develop a dual system of separate education for disabled and non-disabled persons and then have to work towards bringing about inclusive education. Where dual systems of education already exist, *until a single system can be developed*, 'special' education should be compatible with certain standards, but the focus should be on building a restructured and appropriately resourced and supported mainstream education system that aims to meet the needs of the full diversity of children in their local areas.

According to the Special Rapporteur on Education, the Salamanca Statement has failed to bring about high profile global change because it was 'strong on nouns like empowerment, inclusion and quality education but extremely weak on who has the obligation to do what'.¹³ She has spoken

¹² See Tomasevski, K. (2003), *Education Denied: Costs and Remedies* (London: Zed Books), pp.151–4.

¹³ Keynote address to the CSIE Conference 'Developing inclusive education: Supporting human rights in local mainstream schools', 19 May 2004, available at <http://inclusion.org.uk>.

of the importance of 'coupling human rights guarantees with adequate funding'.

Article 17 should remind governments that providing the resources for the development of inclusive education is a necessary part of the obligation to ensure that the right to education is realised for all disabled people. The reference in paragraph 1(a) of article 4 of the official working text to 'legislative, administrative and other measures' is a weak statement in terms of resources for inclusion and needs further elaboration.

In light of the above, and building on the NGO draft, CSIE proposes the following draft of Article 17:

CSIE proposal for Article 17

Article 17 (Education)

1. States Parties shall recognise the right of all persons with disabilities to education. With a view to achieving this right progressively and on the basis of equal opportunity for all, the education of persons with disabilities shall be directed to:

- a) building a society that is inclusive to all;
- b) the full development of the individual's human potential and sense of dignity and self worth, and the strengthening of respect for human rights, fundamental freedoms and human diversity;
- c) enabling all persons with disabilities to fully participate in a free and inclusive society;
- d) the development of the individual's personality, talents and abilities to his/her fullest potential;
- e) recognising and supporting individual learning needs and preferences.

2. States parties shall ensure:

- a) that all persons with disabilities can access inclusive education in their own community including early childhood and pre-school education;
- b) the full participation of persons with disabilities, including those with sensory disabilities, through the provision of required support, including the specialised training of teachers and other educational means and staff, an accessible curriculum, accessible teaching medium and materials, appropriate assistive devices, alternative and augmentative communication means, or other reasonable accommodations;
- c) that no child with disabilities is excluded from free and compulsory primary education on account of his/her disability;

d) that no person with disability shall be required to undergo any medical treatment or intervention to correct, improve or alleviate any impairment, or any actual or perceived disability as a condition of inclusive and full quality education.

3. States parties shall ensure that all persons with disabilities shall access secondary and higher education, vocational training, adult education and lifelong learning on an equal basis with others. To that end appropriate assistance to persons with disabilities needs to be provided.

4. States Parties should take all legislative, administrative and other measures to remove all forms of segregation in education.

5. States parties should ensure that financial resources are allocated for and targeted towards the restructuring of mainstream settings to provide inclusive education, and encourage segregated special settings, where they exist, to transfer their material, financial and human resources to facilitate the inclusion of all learners in inclusive mainstream settings.

About CSIE

The Centre for Studies on Inclusive Education (CSIE) was established in 1982 to promote the education of disabled and non-disabled children together in mainstream schools and to end the practice of educating disabled children separately in 'special' schools. In collaboration with organisations of disabled people it has developed expertise on inclusive education of disabled persons in mainstream settings, including the development and evaluation of practical tools for implementing inclusive education in schools and early years and pre-school settings, working closely with disabled and non-disabled practitioners and academics. CSIE has also closely monitored the development of inclusion at national and international levels, both in practice and in the interpretation of the UN Convention on the Rights of the Child by the Committee on the Rights of the Child.

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