



## Emancipation through education: Views on the Convention on the Rights of Persons with Disabilities

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The *Convention on the Rights of Persons with Disabilities* (CRPD) is the eighth human rights convention enacted by the United Nations. Coming into force in 2008, it is the first international instrument specifically directed toward persons with disabilities. In its articulation of a clear and comprehensive mandate for the elimination of stigma and discrimination, it appeared to be a promising vehicle for the emancipation and empowerment of persons with disabilities. As of July 2015 there are 157 ratifications, of which the great majority are developing countries. In this paper we examine the CRPD within the context, and as part of, a larger and very significant global social-ideological orientation: the international movement for inclusive schooling. As inclusion is increasingly embraced around the world, it is important for educators to understand how this major human rights convention is linked to and intersects with the quest for inclusive schooling. Our analysis reveals that there are inherent tensions and dialectical contradictions between the broad ideals of the inclusion movement and the more focused priorities of the CRPD. As a result, despite grand hopes and elaborate plans, progress of the CRPD has been disappointing. The CRPD is not playing a significant role in inclusive policy making at any level. Very few nations have translated the principles into effective action. Indeed, few countries at present even have the capacity needed to ensure full implementation of the treaty, and the international pattern documents a disconnect between

emancipatory rhetoric and measurable outcomes. To date, it appears that the CRPD has done little to materially and educationally improve the prospects of those with disabilities.

**KEY WORDS:** Disability, Human rights, Emancipation, Education, Inclusion

The major theme of this conference is the emancipative challenges in education and support for persons with disabilities. We have chosen to focus on inclusive schooling, a process that many advocates prescribe as a route to emancipate children with disabilities from stigma and discrimination. Inclusive schooling is a convenient envelope that holds differing agendas and our purpose is not to engage with the debates circling the movement. We are solely interested in inclusive schooling as articulated in the relatively recent *Convention on the Rights of Persons with Disabilities*<sup>1</sup>(CRPD), the eighth human rights convention enacted by the United Nations and the first international instrument specifically directed toward persons with disabilities. The CRPD addresses areas such as expanding human rights, promoting development, eliminating poverty, and nurturing equality. Education is explicitly represented in Article 24 that reiterates and expands the Salamanca Statement which called on governments “to adopt as a matter of law or policy the principle of inclusive education”<sup>2</sup>.

In other work, we have examined aspects of the CRPD in some detail<sup>3</sup>.The overarching theme of this brief paper centers on the

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<sup>1</sup> *Convention on the Rights of Persons with Disabilities and Optional Protocol*, United Nations, New York 2006.

<sup>2</sup> *Salamanca Statement and Framework for Action on Special Needs Education*, United Nations Educational Scientific and Cultural Organization (UNESCO) New York 1994.

<sup>3</sup> M. Winzer, K. Mazurek, *The Convention on the Rights of Persons with Disabilities: Notes on genealogy and prospects*, “International Journal of Special Needs Education” 2014, 17, s. 3–12. M. Winzer, K. Mazurek, *The Convention on the Rights of Persons with Disabilities*, [w:] *Reconstructing disability to reimagine education*, red. M. Hughes & E. Talbott *Handbook of research on diversity in special education*. John Wiley (in press), New York 2016.

CRPD as a vehicle to construct emancipation and empowerment for persons with disabilities. General claims then beg the question of whether there has been discernable progress in inclusive schooling in industrialized and developing nations.

The data base on inclusive schooling is enormous in the global North; scanty in the South where the movement is just starting. There is also limited information on planning and provisions for the CRPD because the mechanisms are still being developed and the ramifications are only beginning to be examined. The education community has been curiously silent about the CRPD. Research on the synthesis of the treaty and the inclusive agenda is virtually absent and there seems to be an overall lack of information about how to translate the international standards of Article 24 into practice. Therefore, we only map broad outlines. We begin with a brief overview of the treaty and then provide notes on implementation and inclusive schooling, with specific nods to Poland and Canada.

## **Brief overview of the CRPD**

The CRPD was adopted by consensus of the General Assembly of the United Nations on December 13, 2006, opened for signature on March 30, 2007, and came into force in May of 2008 after receiving the 20<sup>th</sup> ratification. The Preamble, 50 Articles, and 18-article Optional Protocol converge human rights and development aims. As human rights, they cover the spectrum of life activities such as education, health, employment, and recreation. As development, they speak to areas such as the eradication of poverty and initiating inclusive education for students with disabilities as a tool to create opportunities and stimulate economic development.

The CRPD is first and foremost for persons “who have long-term physical, mental, intellectual or sensory impairments” (Article 1). It systematically identifies those with disabilities, legitimizes their exclusive concerns, and restricts its scope to their specific rights. And, as a global agenda meant to be implemented across national

and cultural lines, the CRPD holds as much importance for people with disabilities in the global North as for those in the South.

Explicitly, the CRPD sets out to provide a clear and comprehensive mandate for the elimination of stigma and discrimination and the emancipation of persons with disabilities. Throughout the text, the language of rights is used in relation to both positive objectives to be pursued and negative situations to be corrected. The Preamble expresses concerns that “persons with disabilities continue to face barriers in their participation as equal members of society and violations of their human rights in all parts of the world” (CRPD, Preamble). It follows that the stated vision is one of people with disabilities living and participating as full members of a society, able to “enjoy the same human rights as all other human beings” (Article 1). Article 24, which addresses education specifically, sets out binding obligations to complete what the Salamanca Statement began. It recognizes the right of all children with disabilities to be included in general education systems, codifies a core set of obligations, and makes a significant effort to highlight how inclusive schooling is to be implemented and guaranteed.

## A glance at implementation

At the opening ceremony in 2007, 81 states, including Poland and Canada, signed. The European Union also signed the *Convention*, marking the first time that the EU was party to a core UN human rights convention. As of July, 2015, there are 157 ratifications of which the great majority are developing countries. Gambia was the most recent nation to ratify in July, 2015.

Ratifying nations must bring existing laws into compliance with the treaty or create new laws regarding disability<sup>4</sup>. Yet, despite

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<sup>4</sup> M. Stein, J. Lord, *Future prospects for the United Nations Convention on the Rights of Persons with Disabilities*. [www.msu.act.zw/.../13172103542-20-09](http://www.msu.act.zw/.../13172103542-20-09) [31.10.2015].

agreeing to review all existing legislation, policies, and programs regarding disability, in both industrialized and developing nations the rhetoric is often simply a façade. As examples, Jamaica was the first state to ratify but has not acted to align its domestic framework with the treaty and remains a disability rights violator in a number of areas<sup>5</sup>. Sub-Saharan nations such as Mali, Malawi, and Nigeria have ratified but across the region as a whole fewer than 10 percent of children with disabilities actually go to school<sup>6</sup>.

Poland was the 121<sup>st</sup> nation to ratify the treaty in 2012. Research points out that Polish legislation already reflects a majority of *Convention* provisions but changes will be necessary to achieve full consistency of national law with the CRPD. For example, the elimination of architectural barriers, specialized and public transport adapted to the needs of people with disabilities, and access to certain types of education and training- general tertiary education, vocational training, adult education, and lifelong learning<sup>7</sup>.

Canada ratified the *Convention* with great fanfare in March, 2010. The government claimed that “Canada is committed to promoting and protecting the rights of persons with disabilities and enabling their full participation in society”<sup>8</sup>. Nevertheless, disability activists complain that “Canada has neglected its obligations to implement and monitor the treaty”<sup>9</sup> and what we have “is a mish-

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<sup>5</sup> *Ibidem*.

<sup>6</sup> *Better education for all when we're all included too: People with an intellectual disability and their families speak out on inclusive education. A global report on Education for All, disability, and inclusion*, Inclusion International, London 2009; *Education's missing millions: Including disabled children in education through EFA FTI processes and national sector plans*. World Vision, Milton 2007.

<sup>7</sup> E. Wapiennik, *ANED country report on equality in educational and training opportunities for young disabled people*, Academic Network of European Disability Experts. Poland 2011.

<sup>8</sup> *Canada ratifies UN Convention on the Rights of Persons with Disabilities*, <http://news.gc.ca/web/article-eng.do?m=/index&nid=517849> [31.10.2015].

<sup>9</sup> G. Reed, *Canada's failing grade on disability rights*, “Globe and Mail” 2013, August 2, s. A11.

mash of vague principles and tame enforcement bodies”<sup>10</sup>. Broadly, the literature suggests very little progress, particularly in public facilities and housing across the country<sup>11</sup>.

The United States has long held itself out as the global leader in disability rights<sup>12</sup>. The dominant theoretical and practical ideas that underlie nondiscrimination legislation and inclusive schooling emerged in the US and were then broadcast worldwide. Notably, therefore, although the US signed the CRPD in 2009, two attempts to pass it before the US Senate have failed and further attempts seem unlikely<sup>13</sup>.

## Inclusive schooling

The CRPD inscribes education within distinct inclusive dialogues. It does not mention special schools or special classes. Article 24 speaks to measures “that maximize academic and social development, consistent with the goal of full inclusion” (Article 24). In general, the phrase *full inclusion* denotes all students in general education, regardless of their disabilities, assisted by reasonable accommodations and support services. There is no provision for instruction outside the regular classroom in special classes or schools<sup>14</sup>.

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<sup>10</sup> A. Picard, *It's past time for our own Disabilities Act*, “Globe and Mail” 2015, August 11, s. A11.

<sup>11</sup> K. Burns, G. Gordon G, *Analyzing the impact of disability legislation in Canada and the United States*, “Journal of Disability Policy Studies” 2010, 20, s. 205–218.

<sup>12</sup> J.E Lord., M.A. Stein, *United States ratification of the Convention on the Rights of Persons with Disabilities: Would it make a difference?*, [w:] *Advancing the rights of persons with disabilities: A US-Iran dialogue on law, policy and advocacy*, red. A. Moore, S. Kornblet, Blue Law International, New York 2011, s. 21–25

<sup>13</sup> J. Lynch, *Senate unlikely to reconsider UN disability treaty*, [http://www. disabilityscoop.com/2014/11/24/senate-unlikely-treaty](http://www.disabilityscoop.com/2014/11/24/senate-unlikely-treaty) [24.11.2014].

<sup>14</sup> J.M. Kauffman, J. Badar, *Instruction, not inclusion, should be the central issue in special education: An alternative view from the USA*, “Journal of International Special Needs Education”, 2014, 17, s. 13–31.

The CRPD insists that standards be legitimized through national level engagement which means that ratifying nations agree to implement the expressed version of full inclusion. Three points are critical here. First, Article 7 of the treaty states that “the best interests of the child shall be the primary consideration” and some researchers interpret this as an opening for segregated classes. Second, inclusive schooling was well established and most industrialized nations were providing greater access to the mainstream long before the CRPD emerged. As well, national policy makers in North America are markedly insular and international directives such as Salamanca and the CRPD wield little influence.

In Canada, debates about inclusive schooling began in earnest in the mid-1980s. The movement rapidly attained the rank of educational orthodoxy and by the early-1990s Canada had inclusive schooling programs in every province, at all grade levels, involving students across the entire range of disabilities. In tandem, segregated schooling became synonymous with limitations and exclusion and most special schools were closed.

Still, 30 years of ideological commitment, research, and innumerable panels and recommendations have failed to consolidate the agenda. Full inclusion is celebrated, but how disabled children should be educated remains a changing and contested domain. In our home province of Alberta, researchers speak to the ‘inclusion confusion’<sup>15</sup>. A recent panel concluded that the basic principles of effective implementation have not been addressed sufficiently. “There are pockets of success,” it noted, “but there certainly is not evidence of widespread success or comprehensive implementation”<sup>16</sup>.

After Salamanca, inclusion was accepted as the policy orthodoxy of the EU and member states. In almost every European country today, “the concept of special educational needs is on the agen-

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<sup>15</sup> C. Gilham, W. Williamson, *Inclusion’s confusion in Alberta*, “International Journal of Inclusive Education” 2014, 18, s. 553–566.

<sup>16</sup> *Report of the Blue Ribbon Panel on Inclusive Education in Alberta Schools*, ATA, Edmonton, [www.teachersab.ca](http://www.teachersab.ca) [31.10.2015].

da"<sup>17</sup> although there exist multiple paths, opinions, programs, and changes of thought. In Poland, Malgorzata Gil<sup>18</sup> points out that the present legal solutions "create a solid base for a modern educational system for children with disabilities". Critics, however, point to dissonances between formal policies and the way in which these policies are operationalized<sup>19</sup>. The system in force is "partly about integration, but also partly about segregation"<sup>20</sup> so that integrative education is not conceptualized around the premise of 'all children'<sup>21</sup>.

It is clear that the meanings of inclusive schooling as articulated by the CRPD are not uniformly absorbed. The changes required to meet the objectives and to equalize educational opportunities requires transformation of traditional systems but in Canada and in many European nations a multilevel architecture remains in place. Inclusion, in whatever version, is simply a reiteration of traditional special education. The numbers identified as disabled are rising and segregated placements thrive. In Canada, some of the largest school districts are not only maintaining the number of students in segregated placements but are increasing them<sup>22</sup>. Across Europe, about two percent of all pupils are educated in special schools or special classes and many nations show an ongoing increase in the percent-

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<sup>17</sup> J.W. Meijer, *Special needs education in Europe: Inclusive policies and practices*, <http://www.inklusion-online.net/index.php/inklusion-online/article/view/136/136-Zugriff> [1.02.2010]

<sup>18</sup> M. Gil, *From segregation to equalization: The Polish perspective on educating children with intellectual disabilities*, "Journal of Contemporary Issues in Education" 2007, 2, s. 40-52.

<sup>19</sup> A. Firkowska-Mankiewicz, *Inclusive education: Task for today's Polish schools*, [w:] ABCD... edukacji włączającej. Google translation [22.04.2015].

<sup>20</sup> D. Apanel, *Integrated education in contemporary Poland*, JAASEP, <http://www.naset.org/3779.0.html> [31.10.2015].

<sup>21</sup> A. Starczewska, A. Hodkinson, G. Adams, *Special education in Poland*. [w:] *Encyclopedia of special education*, red. C.E. Reynolds, Vannest, K., & Fletcher- Jantzen, E. Wiley, New York 2013.

<sup>22</sup> G. Porter, *Are we star gazing? Can Canadian schools really be equitable and inclusive?* <http://www.cae-ace.ca/blog/gordon-porter/2011/1/2/3/are-we-star-gazing-canadian-schools-really-be-equitable-and-inclusive> [29.05.2015].



age of those in special schools<sup>23</sup>. In Poland, statistics from 2010 show special schools as the most popular option, with 44 percent of students with disabilities enrolled<sup>24</sup>.

If the current legal and policy frameworks of many industrialized nations cannot support the CRPD, we must ask whether it is even possible for the treaty to be faithfully implemented in the more than 80 developing nations that have ratified. The simple answer is that in much of the world even the most basic supports and services for children with disabilities are completely lacking<sup>25</sup>. In many nations, the potential demand and extent of the unmet need for education is staggering yet only two to three percent of disabled students actually go to school. That is, 90 percent of children with disabilities are not attending school in developing nations<sup>26</sup>.

Of the 58 million children still out of school, it is estimated that one third have disabilities<sup>27</sup>. Such children remain one of the most marginalized and excluded groups in respect to education<sup>28</sup>. Even in countries close to achieving universal primary education, children with disabilities are the majority of those excluded<sup>29</sup>. Further, the gap between the majority now in school and the forgotten minorities is becoming increasingly pronounced, leaving millions of children with disabilities “even more marginalized, excluded and on the periphery of society”<sup>30</sup>.

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<sup>23</sup> W. Meijer, *op. cit.*

<sup>24</sup> *School education in the year 2010/2011*, Główny Urząd Statystyczny, Warszawa 2012.

<sup>25</sup> Powell J., *Comparative and international perspectives on special education*, [w:] *Sage handbook of special education*, Sage, London 2014, s. 335–349.

<sup>26</sup> *Realizing the Millennium Development Goals for persons with disabilities towards 2015 and beyond*, United Nations, Res/65/186, New York 2011.

<sup>27</sup> S. Miles, N. Singal, *The Education for All and inclusive education debate: Conflict, contradiction or opportunity?*, “International Journal of Inclusive Education” 2010, 14, s. 1–15.

<sup>28</sup> *Realizing the...*, *op. cit.*

<sup>29</sup> *Millennium Development Goals report*, United Nations, New York 2010.

<sup>30</sup> *Equal right, equal opportunity: Inclusive education for children with disabilities*, Handicap International, London 2013, s. 4.

## Postscript

Emancipation, the theme of this conference, is often used as synonymous with freedom. It also implies that there is something from which to be emancipated, holds an expectation of techniques or tools to aid emancipation, and creates empowerment- the process by which people's capabilities to demand and use their rights grow. In this brief paper, we spoke to the CRPD as emancipation and linked it to the quest for inclusive schooling. A number of points emerge.

- Despite grand hopes and elaborate plans, progress of the CRPD is disappointing. To date, it has done little to materially and educationally improve the prospects of those with disabilities<sup>31</sup>. Subscription to the ideals is growing but few countries at present have the capacity needed to ensure full implementation of the treaty and the common pattern is a disconnect between emancipatory rhetoric and measurable reality.

- The CRPD is not playing a significant role in inclusive policy making at any level. Very few nations have translated the principles into effective action. Even when governments have national policies in place, policy makers grapple with how to harmonize national legislation with the CRPD so that policies and laws related to inclusive education are rarely implemented in full<sup>32</sup>. It follows that significant levels of inclusive education practice for children with disabilities are rare.

- The CRPD depicts inclusive schooling as a philosophy and program pinned to a non-negotiable set of precepts that make equity synonymous with placement in a general classroom. Many advocates celebrate the advent of global targets and make sweeping and grand claims about the emancipatory powers of inclusion. Others

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<sup>31</sup> M. Winzer, K. Mazurek, op. cit.

<sup>32</sup> *Equal right...*, op. cit.; K. Opreti, C. Belalcazar, *Trends in inclusive education at regional and international levels: Issues and challenges*, IBE, Geneva 2008.

view the standards as unrealistic and ill conceived and today there is a discernable bent in the UN-based literature toward a recalibration of the education principles to encompass segregated settings<sup>33</sup>.

– Finally, there is no question that we are witnessing the globalization of inclusive schooling. However, it is not possible to predict the future course of the CRPD and whether the disjuncture between international policy, local understandings, and practice can be bridged.

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<sup>33</sup> Winzer M., Mazurek K., op. cit.

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