

Inclusive Education and the UN Convention on the Rights of Persons with Disabilities

by Colin Low

What does the UN Convention have to say on the subject of the inclusion/special school debate? Well I think it comes down heavily on the side of those who believe in what I call “total inclusion”, or as the Centre for Studies in Inclusive Education has put it, “the right to education in a single, inclusive system of education which is adaptable to the best interests of each and every child” and from which “the possibility of choosing segregation should be entirely removed”, and the education of the visually impaired was one of the major points of tension in the negotiations leading up to the agreement of the Convention, the CRPD. Don't get me wrong. I'm very much in favour of the UN Convention and think it represents a real step forward in the assertion and recognition of the rights of disabled people. But I do not think it's a panacea. I am not as sanguine as those who want to throw their hats in the air believing that it is about to deliver them a sackful of rights "binding in international law" which they can march off to the courts and demand. For a start, we should be aware of the scepticism which exists amongst jurists about the enforceability of international law. At best the process of enforcement is very long range, long drawn out and indirect. States have to make periodic reports to the UN on how they are getting on with implementation and a monitoring committee takes evidence, passes judgment and makes recommendations. At the end of the process states are free to accept or reject the recommendations, so the Convention exerts much more moral and political pressure, and the pressure of adverse publicity, than it does legal pressure. That is a very roundabout way of enforcing a right. Twenty-five years after its adoption, the UK still finds itself in the dock over its compliance with the UN Convention on the Rights of the Child.

We should also look critically at just how robust are the rights which are supposedly bestowed by this Convention. Most of them are as long as a piece of string. Phrases like "as far as possible", "to the greatest extent possible" and "all appropriate measures" abound. States are encouraged to take "such action as they consider appropriate" to ensure this or that. If you think that this Convention is going to open up a promised land of rights, consider the Minister I heard in the British House of Lords recently who said that, though the detailed analysis had yet to be undertaken, the Government was fairly clear on a quick scan that the UK would have no difficulty in signing up to the Convention on the basis of its existing legislation.

But I am certainly not saying that the Convention is no good. It certainly gives us a new weapon in our armoury. The European Blind Union initiated a project to go through the various rights conferred by the Convention and spell out in detail just what each of them should mean in practice for blind and partially sighted people. I think this is an extremely worthwhile project which I would certainly commend to other groups. At the end of it we should have an extremely useful toolkit for detailed lobbying, but the key will be the detailed analysis and lobbying undertaken on the basis of the Convention, not the Convention itself. The hard work has only just begun.

Before going on to talk about education and the visually impaired, there are one or two points I should like to make about the Convention in general. The first concerns the generic approach

adopted by the Convention. In general it deals with the rights of disabled persons as a whole rather than those of persons with particular impairments. There are some important exceptions to this. The education of persons who are blind, deaf or deafblind is a case in point. But in general it adopts a generic approach. This is a limitation I think, because it made it difficult for particular impairment groups to lobby for things which were important to them, but perhaps not to other impairment groups. I'm thinking here of things like freepost schemes for the blind, which are obviously not important to anyone but the blind, but are of major importance to them at a time when such schemes are increasingly under threat.

The second point concerns the relentlessly inclusivist approach adopted by the Convention. This is not a function of the Convention as such of course so much as the disability groups lobbying for it, who consist for the most part of vocal and articulate spokespersons who are the ones who have most to gain from inclusive settings. There was a seminal moment in a plenary session of the Ad Hoc Committee debating the Convention when a representative of the International Labour Organisation (ILO) told the Committee that they could insist on an exclusively mainstream approach if they wished, but they should realise that this would probably be condemning hundreds of thousands of disabled people in sheltered facilities throughout the world, who found it hard to hold their own in the open labour market, to a life of unemployment. But it made no difference. The article on employment focuses almost entirely on mainstream provision and makes no reference to specialist support whatsoever. I don't have a problem with a Convention whose basic premise is inclusivist, but as someone from Thailand put it to me recently, I think we need to recognise that one size does not necessarily fit all. There needs to be a diversity of provision to match people's differing needs and circumstances. Indeed the principle of inclusion, if it is to be truly inclusive, really needs to recognise diversity.

This is the background to the debates on education which took place in the Ad Hoc Committee where the Convention was negotiated. As was to be expected, the consensus around a mixed economy of provision was under challenge from those who believe in what the Convention calls "full inclusion", or as the Centre for Studies on Inclusive Education (CSIE) has put it "the right to education in a single, inclusive system of education which is adaptable to the best interests of each and every child" and from which "the possibility of choosing segregation should be entirely removed" (CSIE, 2004). This is the position which was strenuously advocated by the majority of organisations representing disabled people. Groups like the blind, the deaf and the deafblind who were concerned to retain some space in the Convention for the possibility of specialist educational provision in appropriate cases had an uphill struggle to gain recognition for their point in face of the overwhelming weight of the disability lobby as a whole. In the end it looked as if they had just about succeeded, but I now want to turn to Article 24, the Article on education, to consider the nature and extent of their success, and how solidly grounded it can be said to be.

Article 24 - Education

In an appendix I give an extract containing those parts of Article 24 which relate to the school phases of education. From it one can single out 11 distinct elements encapsulating 11 specific aspects of the obligations laid on States Parties in relation to the education of persons with disabilities as follows (references in brackets are to the relevant paras of Article 24:—

- 1 (1): Right of persons with disabilities to education;
- 2 (1): States Parties shall ensure an inclusive education system at all levels;
- 3 (2 (a)): Persons with disabilities not to be excluded from the general education system on the basis of disability;
- 4 (2 (b)): Persons with disabilities can access inclusive education;
- 5 (2 (d)): Persons with disabilities should receive support required within the general education system;
- 6 (2 (d) bis): Effective support should be provided in environments that maximize academic and social development, *consistent with the goal of full inclusion*;
- 7 (3): Persons with disabilities to learn life and social development skills to facilitate their full and equal participation in education and as members of the community;
- 8 (3 (a)): Alternative communication and mobility skills and peer support and mentoring;
- 9 (3 (b)): Sign language and promotion of the linguistic identity of the deaf community;
- 10 (3 (c)): Education of blind, deaf and deafblind children in the most appropriate languages and modes and means of communication for the individual, and in environments which maximize academic and social development;
- 11 (4): Employment and training of teachers, professionals and other staff, including those with disabilities, who are qualified in sign language and braille.

Looked at as a whole, we see the strongly inclusive thrust of the article in paras. 1 and 2 covering the first six elements. There is no equivocation about the obligations laid on States Parties by these paras. "States Parties shall ensure ...". para. 3 covering elements 8-10 makes specific provision for those with sensory disabilities—element 10 for blind, deaf and deafblind children in particular. At first sight this seems like good news from the point of view of ensuring that such children can have the specialist provision they need. But there are at least four problems with this:

(1) There is no reason why much of what is required by par3 cannot be provided in an inclusive setting—and indeed the first sentence of par3 suggests this when it speaks of persons with disabilities learning life and social development skills to facilitate their full and equal participation in education and as members of the community—and to the extent that this is true, there is nothing wrong with that—indeed it is a good thing.

(2) The provision which seems to come closest to endorsing specialist provision is par3 (c), which speaks of ensuring that the education of persons, and in particular children, who are blind, deaf and 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. But the phrase "environments which maximize academic and social development" is a very obscure and elliptical way of referring to specialist provision if that is what is being referred to.

(3) There is evidence from the text of the article that specialist provision is not in fact what is being referred to. Par2 (d) bis (element 6) speaks of effective support being provided in environments that maximize academic and social development, *consistent with the goal of full inclusion*. Note that it speaks of "effective" not "specialist" support, and insists that environments which maximize academic and social development, whatever these might be, must

be consistent with the goal of full inclusion. That would seem to make it clear that the support and the environments are not meant to be special, in the sense of being at variance with the goal of full inclusion. Otherwise why does the text not just say "special"? It might be thought from this that the phrase "consistent with the goal of full inclusion" is meant to qualify our understanding of the phrase "environments which maximize academic and social development" not just in par2 (d) bis, but in the article as a whole. It is certainly possible to think of environments which maximize academic and social development short of specialist provision in the sense of full separate special school provision. And note also that par2 (d) adds for good measure that support required must be provided within the general education system.

(4) If we take a different view with regard to this last point—if we hold that the omission of the phrase "consistent with the goal of full inclusion" in par3 (c) is significant and the phrase "environments which maximize academic and social development" is not meant to be qualified in this way, we are then free to construe it as referring to specialist provision for the blind, deaf and deafblind. But if we do that, we are immediately faced with two further difficulties. The first is the one mentioned earlier, that "environments which maximize academic and social development" is a curious way of referring to special or specialist provision. Why not just say "special"? Why not call a spade a spade? After all, that is the generally accepted way of referring to such provision.

If we brush this point aside and just accept that "environments which maximize academic and social development" is meant to refer to specialist provision at 3 (c), we are then confronted by the second difficulty, which is that we then have an inconsistency in the text. At one point "environments that maximize academic and social development" refers to specialist provision, and at another, where the phrase is qualified by the phrase "consistent with the goal of full inclusion", it does not.

How might such a state of affairs have come about? It is important to remember how such texts are arrived at. They are not the outcome of a logical compilation arrived at as the result of calm reflection by an acknowledged expert working in isolation. They are the result of frenzied negotiations under acute time pressure between over 100 states' delegations, with representatives of 50 or more NGO's lobbying them in the margins of the conference. Competing wordings are bandied backwards and forwards with some hapless official trying desperately to keep track of them on a screen as the discussion proceeds. The scope for confusion is infinite and it is a wonder that anything is ever agreed at all. It is certainly not very friendly for the blind. In the result, everything is a compromise. The blind, deaf and deafblind were lobbying for specialist provision, but in the melee, the best they could get was "environments which maximize academic and social development". They were lucky not to have it qualified by "consistent with the goal of full inclusion" at 3 (c) as it was at 2 (d) bis.

That is a real life description of what was intended and how it transpired, but how well will it stand up legally? not very well I suspect. All that the blind, deaf and deafblind who wanted to retain the possibility of specialist provision, including in appropriate circumstances special school provision, have to hang onto is a rather impenetrably worded formula which is plainly at variance with the generally inclusivist thrust of the education article as a whole.

But perhaps an argument could just be constructed along lines which said, the article should be seen as a generally logical progression from the general to the ever more specific. Let me go through the different elements which I pulled out of the article once again to see how this stands up. We begin in par1 with the right to education. That is followed by the requirement to ensure an inclusive education system at all levels. This does not say in so many words that all persons with disabilities must receive an inclusive education, but the fact that States Parties are required to ensure this "with a view to realizing" the right to education strongly suggests that this is the policy stance underpinning the Convention—for it would seem that the right to education cannot be realised, or cannot be realised as well, in any other way.

Par2 requires States Parties to ensure that persons with disabilities are not excluded from the general education system on the basis of disability and that they can access an inclusive education. This does not say that they must do so, but having relaxed a little, par2 (d) is immediately more prescriptive again when it says that persons with disabilities must receive the support they require within the general education system. This is "to facilitate their effective education", which implies that it, and hence the right to education, could not be facilitated if support is provided outside the general education system. Par2 ends with the requirement that effective individualized support measures are provided in environments that maximize academic and social development, consistent with the goal of full inclusion, which we have identified already as one of the principal guarantees of the inclusive approach.

Par3 is more specific in making provision for those with sensory disabilities. It might be argued that in making provision for the learning of alternative communication, orientation and mobility skills and for education to be delivered in the most appropriate modes of communication for the individual, par3 was moving away from the generally inclusive thrust of the article. It was certainly a success for the blind that par3 (a) makes reference to the learning of braille and orientation and mobility skills, and for the deaf that par3 (b) makes reference to sign language. But as we have already seen, there is no reason why much of this provision cannot be made in an inclusive setting. These provisions really have very little bearing on the inclusion/special education debate. The obligations laid on States Parties are also less categorical. Here they are required only to "take appropriate measures", which, while it has the effect of suggesting that provision should be attuned to individual need, also gives States Parties some discretion as to the measures which they actually take. Finally we have the provision about the education of blind, deaf and deafblind children in environments which maximize academic and social development. It would be nice to be able to argue that this represents the furthest departure from the generally inclusivist thrust of the article in the direction of licensing specialist provision, but given all that I have said already, I do not really think it is possible to do this with any degree of conviction. I have tried my best, but I am forced to conclude that Article 24 is inclusivist through and through, and that the valiant efforts of those representing blind, deaf and deafblind people to secure some recognition of the place of specialist provision in the Convention were ultimately a failure.

Appendix

UN Convention on the Rights of Persons with Disabilities

Article 24 - Education

1. States Parties recognize the right of persons with disabilities to education. With a view to realizing this right without discrimination and on the basis of equal opportunity, States Parties shall ensure an inclusive education system at all levels ...

2. In realizing this right, States Parties shall ensure:

(a) that persons with disabilities are not excluded from the general education system on the basis of disability, and that children with disabilities are not excluded from free and compulsory primary and secondary education on the basis of disability;

(b) that persons with disabilities can access **an inclusive, quality, free primary and secondary education on an equal basis with others in the communities in which they live;**

(c) **reasonable accommodation of the individual's requirements;**

(d) **that persons with disabilities receive the support required, within the general education system, to facilitate their effective education;**

(d) bis that effective individualized support measures are provided in environments that maximize academic and social development, consistent with the goal of full inclusion.

3. States Parties shall enable persons with disabilities to learn life and social development skills to facilitate their full and equal participation in education and as members of the community. To this end, States Parties shall take appropriate measures, including:

(a) facilitating the learning of braille, alternative script, augmentative and alternative modes, means and formats of communication, orientation and mobility skills, and facilitating peer support and mentoring;

(b) facilitating the learning of sign language and the promotion of the linguistic identity of the deaf community;

(c) ensuring that the education of persons, and in particular children, who are blind, deaf and 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.