



International Service for Human Rights

The Reports in Short

ISHR's summaries of documents for the Human Rights Council 4th Session

Report of the Special Rapporteur on the Right to Education¹

Name of Mandate Holder

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Mandate

The mandate was established in 1998² and is focused on transforming the understanding of education to a human right, and the obligation of the State to protect and promote the right. The Special Rapporteur takes a holistic approach to examining, monitoring and promoting the right to education, which includes the financing, establishment and operation of free compulsory education, the fight against all forms of exclusion and discrimination, and efforts to boost the quality of rights-based education. The mandate also focuses on promoting assistance to Governments to secure the progressive implementation of the principle of compulsory primary education, free of charge for all, and developing dialogue and cooperation with relevant United Nations (UN) bodies and agencies, such as the UN Educational, Scientific and Cultural Organisation (UNESCO).

Activities

- Thematic annual report on inclusive education for persons with disabilities;
- Mission Morocco from 27 November to 5 December;
- Mission to Germany.

Annual Report³

Scope

The report focuses on the right of persons with disabilities to inclusive education. It explores the meaning and implications of this right, its basis in international law, and the practical measures needed in order make this right a reality.

Summary and key conclusions:

The meaning of the right to inclusive education for persons with disabilities

- The report states that while enrolment in primary education in the developing world has now increased to 86% over all regions,⁴ estimates of the number of children with disabilities attending school in developing countries range from less than 1% to 5%.⁵

¹ Summary prepared by Hannah Klein, Intern, ISHR; edited by Rami Chalabi, Intern, and Gareth Sweeney, Information Program, ISHR.

² Commission Resolution 1998/33.

³ A/HRC/4/29, 19 February 2007.

- The Rapporteur notes that, in response to this exclusion, a strengthening partnership of the “human rights” and “disability” movements has promoted the paradigm now known as “inclusive education”.
- “Inclusive education” is described as the principle that all children should learn together, wherever possible, regardless of difference. It is the opposite of the “special education” paradigm, in which disabled children are placed in “special schools.” The Rapporteur argues that these special schools are being used to remove children from the mainstream system when they jeopardise a mainstream school’s ability to meet its performance goals. He also suggests that special schools contribute to the social marginalisation of persons with disabilities.

The basis for the right to inclusive education in international law

- The report gives an overview of the foundations of the right to education in international law. It then examines the establishment of the right to inclusive education, pointing particularly to the 1994 UNESCO *Salamanca Statement on Principles, Policy and Practice in Special Needs Education*, which state that education for all can not be achieved without including all types of learners in one learning environment.
- The Rapporteur notes that in September 2006, the Committee on the Rights of the Child produced General Comment No. 9, which sets inclusive education as the goal for educating children with disabilities. Finally, in December 2006, the General Assembly adopted the *Convention on the Rights of Persons with Disabilities*, which stipulates that States Parties shall ensure an inclusive education system.⁶
- The Rapporteur notes that to meet commitments on inclusive education, States must ensure that legislative and financial frameworks are in place. These include *inter alia*, recognising inclusive education as a right, identifying minimum standards, creating a transition plan, providing resources, and establishing monitoring and evaluation mechanisms.

Challenges to the realisation of the right to education of persons with disabilities

- The report examines obstacles to realising the right to inclusive education: stigmatisation of disabled persons; inattention to the specific needs of women with disabilities; inadequate skills amongst teachers and administrators; inaccessibility of education, particularly physical access to buildings; and inadequate attention to the special education needs of learners in mainstream education.
- In particular, the report suggests that inclusion is often misconceived as being prohibitively expensive and impractical. However, the Rapporteur notes that States that have implemented it have found it can be less costly to implement and operate than segregated special education services.⁷
- The Rapporteur acknowledges that in some situations inclusive education may not be the best solution to the child’s needs. For example, blind learners that need to learn Braille early in their education may need to learn this separately. He therefore warns that inclusive education should not be seen as a one-size-fits-all solution. Instead, mainstream education should cater to the needs of each individual child.

Monitoring the right to education of persons with disabilities

- The Rapporteur discusses the numerous institutions involved in monitoring the right to education of persons with disabilities at both the international and national levels. He mentions examples such as the Committee on the Rights of Persons with Disabilities, national human rights institutions, courts and quasi-judicial bodies.

⁴ United Nations, The Millennium Goals Development Report 2006, p.6

⁵ Peters, Susan J., *Inclusive Education: An EFA Strategy for All Children*, World Bank, November 2004

⁶ Article 24

⁷ Porter, Gordon, *Disability and education: toward an inclusive approach*. Inter-American Development Bank 2006.

The international situation of the right to education of persons with disabilities

- In order to compile up-to-date information, the Rapporteur sent out a detailed questionnaire to Governments, United Nations agencies, NGOs and independent experts.
- The Rapporteur then outlines the findings of this questionnaire:
 - The Rapporteur examines the widespread lack of understanding of the difference between simply “including” disabled persons in mainstream schools and effectively “integrating” them into a system that caters for their needs. He notes that in African and Asian States, little reference is made to “integrated” education, and in Latin America, the terms “integrated” and “included” are both used, but with little distinction made between the underlying concepts.
 - The Rapporteur notes that systems for evaluating the quality and relevance of the education of persons with difficulties are practically non-existent and are only present at all in European countries.
 - The Rapporteur acknowledges the limitations placed on countries by public debt and inadequate investment and highlights the disparity in provision between rich and poor countries. He particularly notes that the indirect fee charging that sometimes occurs in poor countries can particularly affect disabled persons, who often need specialised materials and equipment.
 - The Rapporteur highlights the absence of statistical information provided on drop-out rates and academic achievement for young people with disabilities.
 - The Rapporteur notes that multiple discrimination among groups, such as women, persons with multiple disabilities and members of certain social groups, tends to exacerbate exclusion in many education systems.
 - Finally, the Rapporteur notes a lack of opportunities for persons with disabilities and their relatives to participate in designing specific education programmes or to choose freely the appropriate course of education for the individual concerned.

Key recommendations:

States should:

- Eliminate legislative or constitutional barriers to persons with disabilities being included in the regular education system.
- Ensure that one ministry is responsible for the education of both children and adults.
- Ensure that one school system is responsible for the education of all children in their region.
- Transform existing special education resources into resources to assist the mainstream system.
- Provide training to teachers and administrators to help them integrate disabled persons.
- Ensure conditions that constrain teachers from teaching inclusively are addressed, such as class size.
- Invest in inclusive early childhood care and education (ECCE) programmes, to lay the foundations for lifelong inclusion of children with disabilities in both education and society.
- Provide training to parents of children with disabilities so that they know about their rights.
- Develop accountability mechanisms in order to monitor exclusion, school registration and completion of education by persons with disabilities.

Other recommendations:

- The World Bank should compile best practices on the education needs of persons with disabilities, and research funding formulae to ensure effective, efficient and sustainable resource allocations for the right to education of persons with disabilities.
- OHCHR should continue assisting human rights mechanism to review and research specific challenges to the rights of persons with disabilities.
- National Human Rights Institutions and civil society should participate actively in the design of inclusive education and help to monitor implementation and awareness.

- The Human Rights Council should request information on challenges faced by States in their prompt ratification of the *Convention on the Rights of Persons with Disabilities*, and request all human rights mechanisms to include in their work attention to the situation of persons with disabilities.

Mission to Morocco⁸

Scope:

The mission took place from 27 November 2006 to 5 December 2006. The mission assessed the realisation of the right to education in Morocco, with particular focus on children in rural areas, girls, children with disabilities, children belonging to linguistic minorities, street children and working children. The Rapporteur met with representatives of the State, the Ombudsman's office, the Consultative Council on Human Rights, the National Observatory on the Rights of the Child, UN bodies and with representatives of the regional academies of education and training. He also met with NGOs, teachers' trade unions and scholars. He also visited primary, secondary and high schools in urban and rural areas.

Summary and key conclusions:

- The Rapporteur welcomed legal and institutional innovations to realise the right to education. In particular, he noted the inclusion of a right to education in the Constitution, ratification of the *Convention on the Rights of the Child*, adoption of the National Charter for Education and Training, and establishment of the High Council on Education, the National Observatory on the Rights of the Child, the Consultative Council on Human Rights and the Ombudsman.
- The Rapporteur commended the authorities on a rise in school enrolment from 40% in 1960 to 93% in 2006 and the recognition of the Amazigh language and culture in the National Charter.
- The Rapporteur highlighted the implementation of public policies and strategies as one of the major challenges to realising the right to education.
- The Rapporteur noted that children in rural areas, particularly girls, working and street children, as well as children with disabilities, were often deprived of their fundamental right to education.
- The Rapporteur argues that the lack of infrastructure in secondary and high schools, the lack of canteens and boarding facilities, coupled with a prevailing lack of sanitation, water and electricity supply in rural areas, have a direct negative impact on the realization of the right to education, especially in girls.
- The Rapporteur identifies the rising phenomenon of child labour as an important factor impeding children's enjoyment of the right to education.
- The Rapporteur identifies shortcomings in the inclusion of children with disabilities.
- The Rapporteur welcomes the introduction of human rights into the curriculum and textbooks, but notes that the teaching of human rights is often delegated to local associations, with no supervision as to the content and quality of their teaching.

Key recommendations:

The Government of Morocco should:

- Implement measures to increase retention and completion rates of boys and girls alike in the primary school cycle.
- Increase budgetary efforts to address the lack of infrastructure in rural areas, such as Khenifra and the Rif region.

⁸ A/HRC/4/29/Add.2

- Elaborate and implement appropriate legislation on the prohibition of child labour; consider establishing the age for completion of school education as the minimum age for admission to any form of employment; and adopt appropriate socio-economic politics to tackle the root causes of child labour.
- Systematically train teachers in human rights.
- Continue efforts to enforce the prohibition on corporal punishment.

Include a gender perspective and the promotion of the principle of equal rights of men and women throughout the education system.

Mission to Germany⁹

Scope:

The mission took place from 13 February 2006 to 21 February 2006. During his visit, the Rapporteur met with the representatives of Federal Government and the authorities of the various Länder. He held meetings with representatives of UN agencies and NGOs. He met with teachers, parents and students; trade unions; journalists and academics. He also visited several education facilities, including a centre and school for children with cerebral palsy.

Summary and key conclusions:

The German system:

- Germany is a federal country and the constitution provides the 16 Länder (states) with nearly sole jurisdiction in educational matters.
- Germany is one of the three OECD countries that have increased the age of compulsory education to 18. The school system is characterised by relatively high enrolment rates at all levels. However, at upper secondary level more than half the students attend school on a part-time basis as part of vocational education, and the proportion of upper secondary students enrolled in programmes that provide qualifications to enter university is below the OECD average.
- The system provides voluntary preschool facilities for children from age 3 to 6. All children attend primary school. At the lower secondary level of education there is an unusually large variety of programmes and school types, including a three track system for children to follow more or less academic courses.

Education Reform in light of the OECD programme for international student assessment (PISA):

- In 1997, OECD member countries launched PISA with the aim of monitoring the extent to which students nearing the end of compulsory schooling have acquired the knowledge and skills essential for full participation in society. PISA assessments compare students' knowledge in reading, mathematics, science and problem solving.
- The results of the various cycles of PISA show that school performance in Germany was partly below the OECD average, partly at the average and partly a little above the average. Weaknesses were identified particularly with regard to tasks which cannot be resolved by resorting to routine knowledge. The main finding of PISA shows that Germany has the highest correlation between social background and educational achievement compared to other industrialised countries.
- The poor results caused a great shock in the country and triggered educational reform. Priority fields of action were identified, focusing on: improvement of language competence at an early age; strengthening the link between preschool and primary school with the aim of early school entry; improvement of primary education; support for educationally disadvantaged children,

⁹ A/HRC/4/29/Add.1

particularly from migrant backgrounds; improvements to the overall quality and professionalism of teaching; and expansion of the provision of school and non-school activities for the whole day. Parents are now involved in the educational process of their children through German courses and increased information and advice about preschool opportunities.

Educational challenges:

- Social opportunities and education opportunities:
 - The Special Rapporteur notes that the system of classifying schoolchildren in lower secondary education includes an individual assessment of the pupil by teachers who have not always been trained in this kind of assessment. The Special Rapporteur believes undue weight may be being given to the results of these assessments.
 - The Special Rapporteur believes that it is clear that this early classification militates against the less advantaged children, such as those living in poverty of immigrant origin and with disabilities. The classification system tends to move the educational system away from an inclusive approach.

- Education of migrant children and children of migrant background:
 - The Special Rapporteur sees the problem of language as key to this issue. He argues that in many cases, lack of tuition in children's mother tongue impedes their educational development. He adds that the linguistic barrier seems more social than ethnic, as these communities are generally found in the less advantaged strata of society, leading to social disparities between students.
 - The Special Rapporteur believes it is probably illegal immigrants who encounter the greatest difficulties in the area of education. Many children and teenagers stay away from school for fear of being found out or deported.
 - Information provided to the Special Rapporteur indicates that children with a refugee background are not covered by the compulsory school system and that refugee reception centres of lie far from schools.

- Education of children with disabilities:
 - At the request of the Special Rapporteur, the German Government responded to a questionnaire on the situation regarding the right to education of disabled persons.
 - Germany's response indicated that it has mounted a campaign for the so-called "integration" of disabled persons in educational processes. However, there are signs that insufficient progress has been made towards the inclusion of the disabled in ordinary schools.
 - Education authorities seem to accord very limited opportunities to the parents of a disabled child to choose the best options for their child.
 - Most schools visited by the Special Rapporteur lacked the necessary structures and amenities for the admission and accommodation of children with motor disabilities.

- Early childhood education and care:
 - The Special Rapporteur states that without question, Germany has done a great deal to develop education from an early age. However, the Special Rapporteur heard a number of reports indicating that this work has been led by a conviction that formal education should begin at the age of 3 and 4. The Special Rapporteur hopes that this situation will not entail the risk of over-institutionalising preschool education.
 - Since early childhood care is not compulsory, the Special Rapporteur believes there is a need to encourage parents to send their children to kindergarten and ensure it is free of charge.

Key recommendations:

The Government of Germany should:

- Include inform safeguards for the right to education in the constitutions of its Länder and Basic Law. These safeguards should also ensure the participation of parents of schoolchildren in decision-making relating to their children in educational centres.
- Launch an extensive national debate on the relationship between the educational systems currently operating and the exclusion and marginalisation of schoolchildren. This debate should consider the appropriateness of maintaining a two or three track system.
- Ensure that preschool system forms an ordinary part of the education system.
- Commission a study into ways of levelling out the salary and professional conditions applicable to teachers in the different schools systems and levels.
- Step up the social, economics and educational support provided to schoolchildren whose mother tongue is not German.
- Commission studies to clarify the actual school attendance situation of asylum-seeking children without the proper papers; and also to explore the possibility of withdrawing Germany's reservations and declarations made on the *Convention of the Rights of the Child*.
- Set in place arrangements to improve the compilation and processing of complaints relating violations of the right to education of refugees, refugee applicants and asylum seekers, and those who do not have a legal immigration status.
- Consider ratifying the *Convention on the Rights of Persons with Disabilities*.
- Make efforts to promote the inclusion of school children with disabilities in the ordinary education system, and train more persons with disabilities as teachers.
- Compile, as a matter of urgency, a national inventory of the accessibility conditions of school buildings and plans drawn up for their reconstruction, so as to facilitate access by persons with disabilities.
- Adopt measures to ensure the home schooling system is properly supervised by the State.